United States Court of Appeals for the District of Columbia Circuit



TRANSCRIPT OF RECORD

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

LOCAL 28, INTERNATIONAL ORGANIZATION OF MASTERS, MATES, AND PILOTS, INC., AFL-CIO, PETITIONER

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

NATIONAL LABOR RELATIONS BOARD, PETITIONER v.

ASSOCIATION OF MARITIME WORKERS, LOCAL No. 3, INTER-NATIONAL ORGANIZATION OF MASTERS, MATES, AND PHOTS, INC., AFL-CIO, RESPONDENT

INGRAM BARGE Co., PETITIONER

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

ON PETITIONS FOR REVIEW AND ON PETITION FOR ENFORCE-MENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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MAY 1 0 1963

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STATEMENT OF QUESTIONS PRESENTED

 In Nos. 17,062 and 17,157, the question presented is whether substantial evidence on the record as a whole supports the finding of the Board that Local 3, and Local 28 and Harry Rutan as agents of Local 3, violated Section 8(b) (1) (A) of the Act.

2. In No. 17,193, the question presented is whether the Board properly found that Local 28 is not a labor organization within the meaning of section 2(5) of the Act.

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17062

LOCAL 28, INTERNATIONAL ORGANIZATION OF MASTERS, MATES, AND PILOTS, INC., AFL-CIO, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

No. 17157

NATIONAL LABOR RELATIONS BOARD, PETITIONER v.

ASSOCIATION OF MARITIME WORKERS, LOCAL NO. 3, INTERNATIONAL ORGANIZATION OF MASTERS, MATES, AND PILOTS, INC., AFL-CIO, RESPONDENT

No. 17193

INGRAM BARGE Co., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

ON PETITIONS FOR REVIEW AND ON PETITION FOR ENFORCE-MENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

Case No. 17,062 is before the Court on the petition of Local 28 to review and set aside certain portions of an order of the National Labor Relations Board.

No. 17,157 is before the Court on the petition of the Board for enforcement of its order against Locals 3 and 28, issued pursuant to Section 10(c) of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. Sec. 151, et seq.). No. 17,193 is before the Court on petition of the Ingram Barge Company to review and modify certain portions of the Board's order denying relief against Local 28 which the Company, as charging party, had requested. The Board's Decision and Order (J.A. 115-117, 18-109)² are reported at 135 NLRB 1175. This Court has jurisdiction under Section 10 (e) and (f) of the Act.²

L The Board's findings of fact

The Board found in Case Nos. 17,062 and 17,157 that Local 3, and Local 28 and Harry Rutan as agents of Local 3, violated Section 8(b)(1)(A) of the Act by threats and acts of violence during a strike jointly conducted by Locals 3 and 28 against Ingram Barge Company from July 5 to August 7, 1958. Ingram's petition to review in Case No. 17,193 is predicated upon the Board's failure to find Local 28 a "labor organization" under the Act and therefore responsible as a principal for its unlawful conduct during the strike. The evidentiary basis for the Board's findings may be summarized as follows:

¹ "J.A." refers to those portions of the record printed as a joint appendix to the briefs. Whenever in a series of references a semi-colon appears, references preceding the semicolon are to the Board's findings, and those following are to the supporting evidence.

² The Court on February 26, 1963, directed Local 3, Local 28, and the Company to file their briefs on or before March 30, 1963, and the Board to file its brief on or before April 30, 1963.

A. The strike against Ingram *

Ingram maintains a fleet of towboats and barges. Local 28 represents the masters, mates, and pilots employed on these vessels and Local 3 represents all other deck personnel. In the spring of 1958, Ingram proposed a change in current practice so that all boat personnel would be given three-fourths of a day off with pay for each day worked rather than a full day off with pay. The unions would not agree to the change which was nevertheless put into effect by Ingram on July 1, 1958. Local 3 called its members out on strike on July 5 and, a few days later, the masters, mates, and pilots refused to work with "scab" strike replacements and left the tied-up boats (J.A. 23-24). In one instance, a Local 28 representative notified a master that "your orders are to get off when they take this boat out" (J.A. 56).

Local 3 established picket lines at various locations along the routes of the Ingram boats. Harry Rutan, both the business agent for Local 3 and the assistant business agent of Local 28, participated in this picketing (J.A. 27–28). On July 10, pickets bombarded strike replacements on the Arthur J. Dyer with marbles propelled by slingshots and cursed them (J.A. 27). Two days later, Rutan spoke to an official of the

³ Locals 3 and 28 designated nothing for inclusion in the Joint Appendix and have not filed briefs with the Court. In these circumstances, it appears that no useful purpose would be served by recounting in detail the evidence of misconduct relied upon by the Board. We have therefore in this section of the brief given only the highlights of the evidence bearing upon strike misconduct and the responsibility of Local 3, Local 28, and Rutan for that misconduct.

Texas Company about the trouble both locals were having with Ingram (J.A. 34-35). On July 16, Rutan and other men threw rocks at the E.B. Ingram as it was proceeding on the Chicago Sanitary Canal and smashed the window of the pilot house (J.A. 28-29). On July 20, Rutan and three other men again threw rocks at E. B. Ingram personnel who were trying to hook up hoses on a barge at a Texas Company dock at Lockport, Illinois (J.A. 30-31). Later that day, Texas Company personnel refused to work on Ingram barges because they were afraid of pickets stationed near the barges by Rutan (J.A. 32-34). On July 21, Rutan told a Texas Company attorney that he had no power to call off the picketing and referred the attorney to Local 28's business agent, E. A. Adams (J.A. 34, 57-58). On July 24, pickets at Lockport accosted Captain Scott of the E. B. Ingram, threatened to "beat the hell" out of him, and threw him into the canal (J.A. 35-36).

B. The supervisory status of master, mates, and pilots

In 1958, Local 28's membership consisted of approximately 600 masters, mates, and pilots on vessels plying the Mississippi river, its tributaries, and certain other inland waterways of the United States (J.A. 21-22, 61). A 2-year contract entered into on March 16, 1957, between Local 28 and Ingram defined masters, mates, and pilots as "deck officers" and provided, inter alia, that "the authority and legal responsibility of the master and the licensed officers, is fully recognized and their orders shall be obeyed" (J.A. 68). By long established tradition and custom, masters, mates,

and pilots on the inland waterways are recognized as officers whose orders must be instantly and unconditionally obeyed by the deck crew upon pain of discharge (J.A. 66, 67-68; 212-216, 218, 235). This distinction forms the basis for membership in Local 28, which admits only personnel "acting in an officer capacity" aboard sail or power propelled vessels (J.A. 67-68; 254). The distinction is also reflected in the substantially higher pay of the deck officers. Thus, under its contract with Local 28, the monthly wage rates in 1958 were \$820 for masters, \$710 for pilots, and \$375-\$465 for mates (J.A. 265). The wage rates for deckhands and tankermen at this time were \$300 and \$315, respectively (J.A. 265).

In 1958, Ingram employed 20 masters and pilots, 10 first mates, and 10 second mates on its five boats (J.A. 61; 256-258). All but six second mates were licensed officers. The authority of the unlicensed second mates over deckhands was identical with that of the licensed mates (J.A. 67-68; 202, 209-213).

The operation of the Ingram boats is representative of towboat operations on the inland waterways. The complement of the deck department "includes a mas-

^{*}Ingram employs two sets of officers for its boats as these boats are in continuous operation. The officers (and other boat personnel) work alternate voyages which are as long as 30 or more days (J.A. 136).

⁵ The United States Coast Guard discontinued licensing requirements for towboat officers when the boats changed from steam to diesel power. Employees who load and unload petroleum must be licensed as "tankermen." Such licenses, which are held on Ingram boats by some mates and some deckhands, do not confer supervisory authority of any kind (J.A. 63).

^{*}The engineroom department, not here involved, includes a chief engineer and subordinate engineroom personnel.

ter, pilot, first mate, second mate, deckhands, tankermen, a cook, and a cook's helper. The day is divided into 6-hour watches. The master, first mate, and two deckhands or tankermen—forming one watch—are relieved every 6 hours by an opposite watch which includes the pilot, second mate, and two other deckhands or tankermen (J.A. 62-63; 147-148).

The boat may push as many as six coupled barges stretching ahead over 1,000 feet. Special techniques and procedures are involved in docking operations and in taking the tow through locks, at which times the barges must be uncoupled, pushed separately through the locks, and reassembled (J.A. 63-64; 216).

The master navigates the boat and tow from the pilot house during his watch. When he is relieved by the pilot, the master may advise him what barges are

The smallest of the Ingram boats, the Alice B. Ingram, at times has only one deckhand on board who stands his watch with the first mate, so that the second mate has no deckhand on duty with him. At other times, however, the Alice B. Ingram has had two or more deckhands in its crew (J.A. 71; 251, General Counsel's Exh. 58 k, j, i, h, d). At such times, one or more deckhands stand watch with the first and second mates. Sometimes Ingram ships more than two mates on a trip. In such instances, the extra mates, other than those assigned as first and second mates, serve in the capacity of deckhands (J.A. 71-72; 173-175, 229-231). Port Captain Cioll testified that 12 or 18 such instances had occurred during the 18 months preceding the strike (Tr. 2232-2233), but that these instances were of short duration, lasting from three to fifteen days (J.A. 180-181). The payroll sheet made up by Captain Coats of the Hortense B. Ingram for the period from July 1-15, 1957 shows that 4 mates and 2 deckhands were aboard from July 1 through July 9 (J.A. 226-228, General Counsel's Exh. 58A). This is the only specific evidence of such instance appearing in the record. Mates serving as deckhands are nevertheless regarded as mates and are paid as such (J.A. 72; 227, 230).

to be picked up or docked but does not advise him in the details of navigation (J.A. 68; 171-172). During his watch, the pilot has over-all responsibility for the navigation and safety of the boat, tow, and personnel (J.A. 64-65, 68-69, 75-87; 129).

The mates are immediately responsible for the work of the deckhands, and the master or the pilot will not ordinarily issue orders to the deckhands except through the mates (J.A. 73; 122–124, 131–132, 202, 205–206, 228–229). The mates are responsible for keeping the boat "shipshape" and assign the deckhands tasks such as painting, washing down the decks, and repairing lines. The mates are not required to do maintenance work and, if they do painting or repair work, do so only because they wish to. They do not normally perform the more menial tasks, such as washing down the decks (J.A. 69–70, 85–87; 206–207, 213–214, 222–223, 225–226).

Docking and locking procedures depend upon many variable factors and, for their successful execution, require the close cooperation of all participants. At times the master or pilot may regard the situation as one not requiring the issuance of special instructions to the mate. When weather or other conditions are unfavorable the master or pilot will outline his plan of maneuver to the mate, who will then order the deckhands to appropriate stations. During the maneuver the master or pilot will give directions to the mate, or to a deckhand, and the mate will give directions to the deckhands (J.A. 73–87; 203–206, 223–224, 231–232, 237–244). In the words of Captain Jess Marks,

in describing a ticklish docking operation, he hollers at "everybody I can holler at " " the pilot does it, too, and the mates scream, too. They scream at the deckhands, the pilot screams at the mate and everybody is hollering something " " " the pilot screams at the [deckhands], too " " " you have to be assisted by lines and everything else available and everybody available in order to come to the sweet conclusion of finally getting where you want to get" (J.A. 243).

II. The Board's conclusions and order

The Board found from the foregoing facts that Locals 3 and 28 were co-sponsors of the strike against Ingram and concluded that both locals and Harry Rutan violated Section 8(b)(1)(A) of the Act by the acts of violence during the strike committed by Rutan or committed by others in his presence or with his approval (J.A. 38-42, 52-58). The Board further found that Local 28 was not a labor organization under the Act because it was composed entirely of supervisors and therefore concluded that it violated Section 8(b)(1)(A) of the Act not as a principal but only as an agent of Local 3 (J.A. 93-103).

The Board's order (J.A. 116-117, 105-109) requires Local 3, and its agents Local 28 and Harry Rutan, to cease and desist from restraining and coercing Ingram's employees by acts of physical violence and threats of physical violence, and from infringing upon the rights of Ingram's employees under the Act by any like or related conduct; and to post appropriate notices.

SUMMARY OF ARGUMENT

- 1. As the record shows that Local 3's business agent, Harry Rutan, as leader of the strike against Ingram, engaged in acts of violence and encouraged strikers to engage in acts of violence, the Board properly found that Local 3 and Rutan, as its agent, restrained and coerced employees in violation of Section 8(b)(1)(A) of the Act. The record also shows that Local 28 was co-sponsor of the strike and hence that it also violated Section 8(b)(1)(A) as an agent of Local 3.
- 2. The Board properly found that, as an association of supervisors, Local 28 is not a labor organization under the Act and hence that it could not be held liable as a principal for its unlawful conduct during the strike against Ingram. Local 28 admits to membership only masters, mates, and pilots. The supervisory status of masters is clear and is not disputed by Ingram. When they relieve masters, pilots have the same responsibility as the master for the safety of the boat, tow, and crew, and must frequently use independent judgment in discharging their responsibility. Their orders to mates and deckhands must be unhesitatingly and faithfully executed. It is therefore clear, and Ingram does not now dispute, that pilots have authority "responsibly to direct" employees and qualify as supervisors under the Act.

The record amply supports the Board's finding that mates also responsibly direct deckhands and are supervisors under the Act. All mates, first or second, licensed or unlicensed, are immediately responsible for the work of the deckhands. During locking or docking operations, or in emergency situations created by wind or tides, the master or pilot is engaged in steering the boat and depends upon the

mate to supplement his orders and to coordinate deck work with the movements of the boat. The mate as well as the master or pilot must make swift on-thespot judgments and issue orders to deckhands which must be instantly obeyed to avert injury to personnel and damage to property. The Board's conclusion from these circumstances that mates are supervisors is realistic and does not establish "a preposterous rate of supervision."

Local 28's status as an association of supervisors is not lost because mates may work at times as deck-hands or without subordinates. Whatever their assignment, mates are recognized and paid as such and may be called upon at any time to exercise their supervisory authority.

ARGUMENT

L Substantial evidence on the record considered as a whole supports the Board's finding that Locals 3 and 28, and Harry Rutan, violated Section 8(b)(1)(A) of the Act

The record shows that Harry Rutan, Local 3's business agent, as leader of the strike against Ingram engaged in acts of violence and encouraged strikers to engage in acts of violence, including the hurling of rocks at Ingram boats and personnel and an assault upon an Ingram captain. Local 3 and Rutan, as its agent, clearly violated Section 8(b)(1)(A) of the Act by this conduct. Highway Truck Drivers and Helpers Local 107 v. N.L.R.B., 107 U.S. App. D.C. 1, 4, 273 F. 2d 815, 818; Progressive Mine Workers v. N.L.R.B., 187 F. 2d 298, 300-301 (C.A. 7); N.L.R.B. v. United Mine Workers, District 23, 195 F. 2d 961, 962 (C.A. 6). Local 28 also clearly violated

Section 8(b)(1)(A) as a co-sponsor of the strike and hence as an agent of Local 3. National Marine Engineers Beneficial Association v. N.L.R.B., 274 F. 2d 167, 170-171 (C.A. 2). As pointed out by the Trial Examiner, Rutan's admission to a Texas Company attorney on July 21 that only Business Agent Adams of Local 28 had authority to withdraw the pickets at Lockport (supra, p. 4) is "clear proof of Local 28's participation with Local 3 in its strike as a joint venturer or co-sponsor" (J.A. 58). Moreover, Local 28 was equally concerned with Local 3 in retaining the practice of one day off for each day worked, Rutan was its assistant business agent, and at least one master employed by Ingram was instructed by a Local 28 representative to leave his boat if Ingram attempted to operate with striker replacements.

For the foregoing reasons, we respectfully submit that substantial evidence on the record considered as a whole supports the Board's finding that Local 3, and Local 28 and Harry Rutan, as agents of Local 3, violated Section 8(b)(1)(A) of the Act.

II. The Board properly found that Local 28 is not a labor organization within the meaning of Section 2(5) of the Act

The record shows that Local 28 admits to membership only persons employed as "officers" on the inland waterways, that is, masters, mates, and pilots.* If, as

^{*}Ingram suggests that Local 28's refusal to produce its records in response to subpense issued by the General Counsel warrants an inference that its membership included categories of employees other than "officers" (Brief 10, 26). As the General Counsel did not seek district court enforcement of the subpense upon Local 28's challenge to their legality, such an inference cannot be substituted for evidence.

the Board found, masters, mates, and pilots are supervisors under the Act, then Local 28 is not a labor organization within the meaning of Section 2(5) of the Act and it may not be held liable as a principal for its unlawful conduct during the strike against Ingram.

Section 2(11) of the Act defines "supervisor" as:

any individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Masters on the inland waterways are in complete command of their boats and may discharge subordinate personnel for any breach of discipline. Their supervisory status is therefore clear and is conceded by Ingram. The supervisory status of pilots is also clear. The record evidence, as summarized by the Trial Examiner (J.A. 95-96) establishes that:

The responsibility of a pilot when he relieves the master is the same as the master's with re-

^{*} Section 2(5) of the Act provides in pertinent part:

[&]quot;The term "labor organization" means any organization of any kind * * * in which employees participate and which exists for the purpose * * * of dealing with employers concerning grievances, labor disputes. * * *"

Section 2(3) of the Act provides in pertinent part:

[&]quot;The term "employees" * * * shall not include * * * any individual employed as a supervisor * * *"

spect to the safety of the boat, tow, and the entire crew. In carrying out this responsibility the pilot is frequently confronted with complex procedures which involve skillful independent judgment. The pilot's judgments are complicated by variable changing factors, many of them unforeseeable, which do not permit his duties to be characterized as routine. In the performance of his functions the pilot must, and does, with authority issue orders to mates and deckhands which they must unhesitatingly and faithfully execute. Failure to respond in this manner to the pilot's orders could result in serious damage to property and injury to person.

Accordingly, whether or not pilots may discipline, or effectively recommend the discipline of, employees, they unquestionably have authority "responsibly to direct" employees as that phrase is used in Section 2(11) and are therefore supervisors for purposes of the Act.¹⁰ Indeed, Ingram now recognizes that the Board's determination that pilots are supervisors is reasonable and no longer takes issue with that determination (Brief 8).

Ingram contends, however, that mates are merely "leadmen" whose authority over deckhands is limited to giving routine directions (Brief S-9, 14-19). In this connection, Ingram terms its unlicensed second mates "glorified deckhands," claims that their work is identical with that of "an experienced deck-

¹⁰ Supervisory status is established by the possession of any one authority listed in Section 2(11). Ohio Power Co. v. N.L.R.B., 176 F. 2d 385, 387 (C.A. 6), cert. denied, 338 U.S. 899.

hand or tankerman" (Brief 6), and seeks to differentiate them from other mates. The record establishes, however, that all mates, licensed or unlicensed, are officers "with authority to issue orders in the performance of work which nonofficer deck personnel must obey" upon penalty of discharge (J.A. 67-68, 96; 209-210, 222-223). Ingram itself admits elsewhere in its brief (p. 18) that there is "no substantial difference between first and second mates, licensed mates and unlicensed mates." The Board's findings respecting the duties and responsibilities of "mates" are therefore no less applicable to unlicensed second mates than to other mates.

As shown in the statement of facts (supra, p. 6, n. 7), the mates have "constant" (J.A. 96) authority to issue orders to the deckhands and are immediately responsible for directing the work of the deckhands. Their responsibility is two-fold: They must keep the boat "shipshape" and they must give the master or pilot whatever deck assistance is needed in navigating the boat. The mates manifestly exercise independent judgment in issuing orders to deckhands during locking or docking operations or in emergency situations created by wind or tides." The master or pilot at such times is engaged in steering the boat and must depend upon the mate to supplement his orders and

¹¹ Ingram's claim that mates "are in no different position from the deckhands" during docking and locking operations and that deckhands at times give "instructions or directions to the mates" (Brief 18) warrants little comment. Although the mate and deckhands alike may perform routine tasks, the record clearly establishes that in critical situations it is the mate who commands and the deckhand who obeys (J.A. 183).

to coordinate deck work with the movements of the boat. Thus, the master or pilot may outline his general plan of maneuver to his mate before a locking or docking operation but will depend upon the mate to place the deckhands in strategic positions. During the operation itself, both officers will issue orders which must be instantly obeyed to avert injury to personnel and damage to property. As stated by the Trial Examiner (J.A. 97), "The most cursory appraisal of the swift on-the-spot judgments of pilots and mates and the orders given pursuant thereto while maneuvering 1,000 foot tows in the face of unpredictable winds, currents, and weather conditions reduces to sheer implausibility any characterization of such judgments and orders as routine." It therefore plainly appears, we submit, that mates as well as pilots responsibly direct employees in the performance of their duties and hence qualify as supervisors under Section 2(11) of the Act.

Ingram argues that mates must be considered employees rather than supervisors because denominating them supervisors establishes "a preposterous rate of supervision" (Brief 9, 24–25). As pointed out by the Trial Examiner (J.A. 100), the ratio of supervisors to employees is a factor to be considered in determining whether particular persons or classes of persons possess supervisory authority, but it is not a conclusive factor. Rather, Ingram correctly states in its brief (p. 13) "that in determining supervisory status, the important thing is the actual duty and authority of the employee, not his formal title" (quoting from N.L.R.B. v. Quincy Steel Casting Co., 200 F. 2d 293,

296 (C.A. 1)). The supervisory status of mates is therefore not established simply because they are "officers," " nor is it disproved because in many business arrangements supervisors usually have more than one or two subordinates. See, for example, Ohio Power Co. v. N.L.R.B., 176 F. 2d 385, 386-388 (C.A. 6), cert. denied, 338 U.S. 899; N.L.R.B. v. Fullerton Publishing Co., 283 F. 2d 545, 550, note 3 (C.A. 9). Ingram properly emphasizes the "teamwork" necessary for the successful completion of a docking or locking maneuver (Brief 16-17). The "team," however, must be directed and, as we have shown, the master or pilot depends upon the mate, particularly where steering is complicated by adverse weather or water conditions, to coordinate deck activities with the movements of the boat and tow by appropriate directions to the deckhands. In view of these special circumstances, the Board's conclusion that mates responsibly direct deckhands and hence are supervisors under the Act is not "preposterous" but entirely realistic.

Ingram also argues that its unlicensed second mates must be regarded as employees rather than supervisors because "In certain instances, particularly aboard the Alice B. Ingram they work with no deckhands at all" (Brief 23). The record indicates that generally on the Alice B. Ingram, the smallest of Ingram's five boats, the second mate stands watch without a deckhand (J.A. 70-71; 135-136, 248).

²² The Trial Examiner's finding that mates responsibly direct deckhands is based on evidence of their "actual duty and authority" and not, as Ingram asserts (Brief 14), because they are recognized as "officers" in Ingram's 1957 contract with Local 28 (J.A. 94-96).

Mack Brewer and Irvin Taylor were second mates on the Alice B. Ingram for approximately a year before the July 1958 strike against Ingram. Ingram's payroll records show that the Alice B. Ingram during this period at times carried two deckhands or a deckhand and a tankerman (supra, p. 6, n. 7). Brewer testified that sometimes he substituted for the first mate and gave orders to deckhands or tankermen (J.A. 245-253). On other Ingram boats, extra mates are sometimes carried and serve as deckhands but, as noted above (p. 6, n. 7), this is not a common occurrence. Whatever their assignment, mates are recognized and paid as such (J.A. 72; 227, 230).

It is therefore clear that no mate employed by Ingram, not even a second mate while serving on the Alice B. Ingram, spends all his time without subordinates. It is also clear that every mate, including unlicensed second mates, may be called upon at any time to exercise his supervisory authority. Accordingly, we submit, the Board properly held that Local 28 did not lose its "real character * * * as an association of supervisors" (J.A. 101) merely because Ingram called upon some of its members to work at times without subordinates or as deckhands. Cf. International Organization of Masters, Mates and Pilots v. N.L.R.B., No. 15537, C.A. D.C., order issued December 20, 1960, remanding case to Board; National Marine Engineers v. N.L.R.B., 274 F. 2d 167, 174 (C.A. 2). The criti-

¹³ Taylor denied that he had authority to tell a deckhand what to do but concede that "If the first mate wasn't there I might have to tell him" (J.A. 140).

¹⁴ No mate normally serves on the Alice B. Ingram for as much as a year (J.A. 71-72).

cal consideration is not the frequency with which a mate may exercise his supervisory power, nor the amount of time he may spend doing non-supervisory work, but rather the "constant power to command inherent in his status as [mate]" (J.A. 98). As stated in *Ohio Power Co. v. N.L.R.B., supra*, Section 2(11) "does not require the exercise of the power [responsibility to direct] for all or any definite part of the employee's time. It is the existence of the power which determines the classification." 176 F. 2d at 388.

For the foregoing reasons, we respectfully submit that the Board properly held that Local 28 is not a labor organization within the meaning of Section 2(5) of the Act, and therefore that it may not be held liable as a principal for its unlawful conduct during the strike against Ingram.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petitions to review should be denied and that a decree should issue enforcing the Board's order in full.

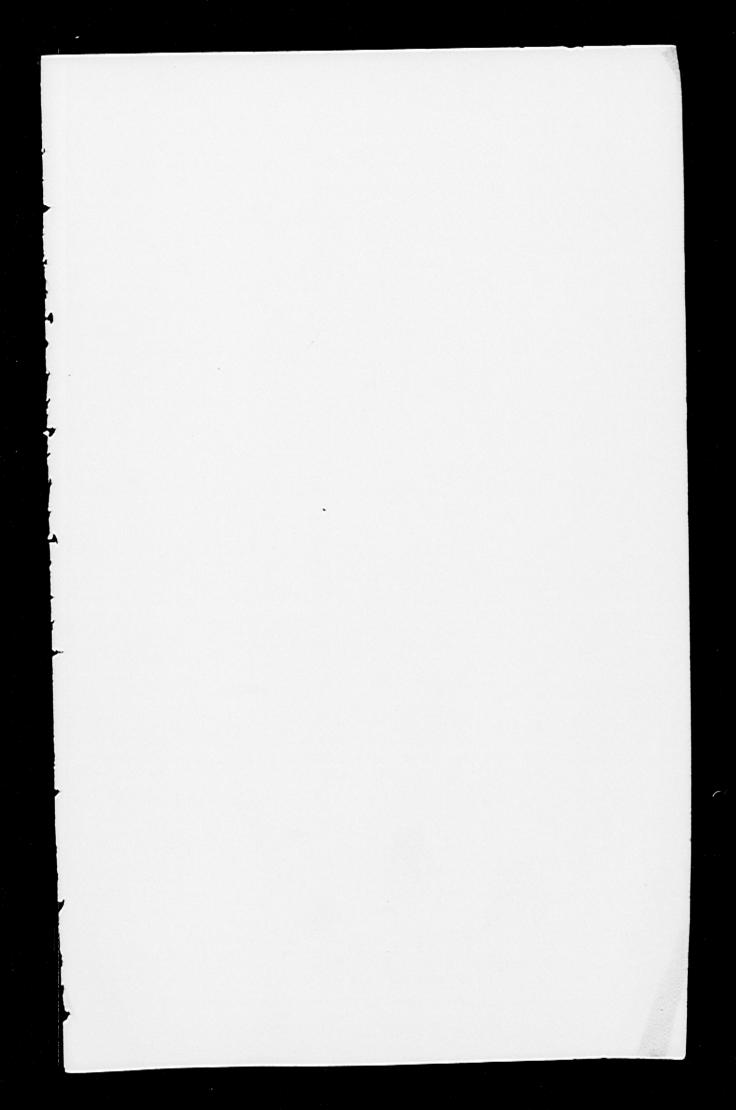
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APRIL 1963



IN THE

United States Court of Appeals

DISTRICT OF COLUMBIA CIRCUIT

No. 17,193

280

INGRAM BARGE COMPANY,

Petitioner,

versus

NATIONAL LABOR RELATIONS BOARD,
Respondent.

On Petition to Review an Order of the National Labor Relations Board.

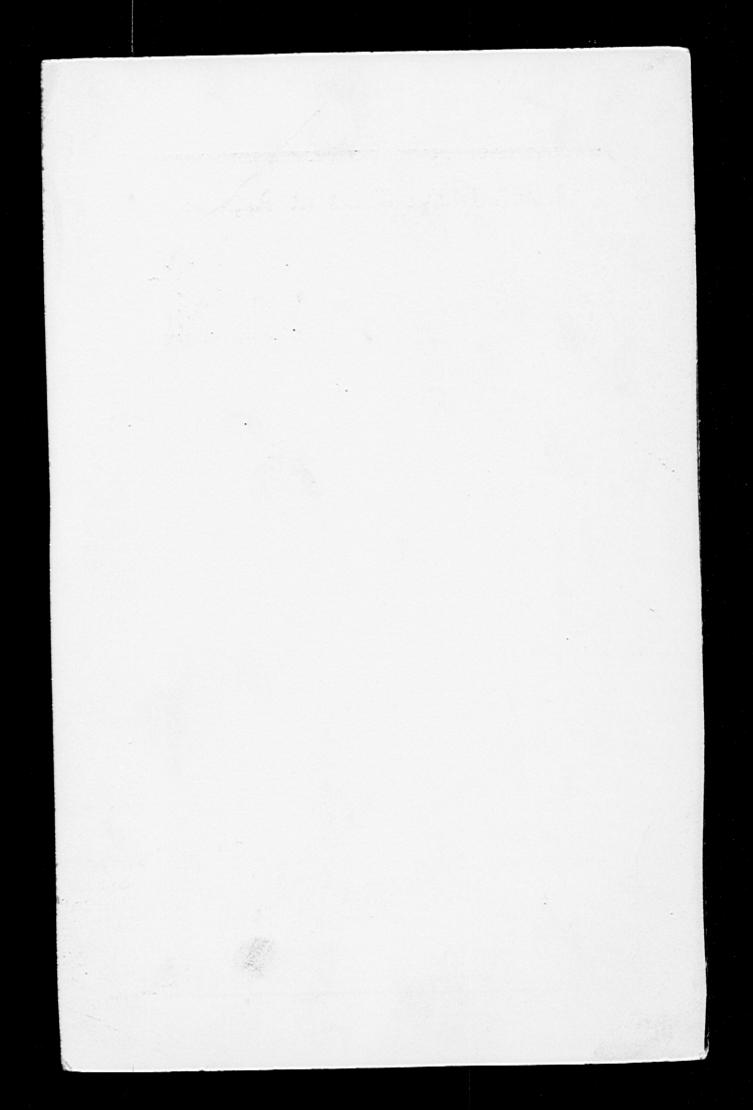
United States Court of Appeals

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STATEMENT OF QUESTION PRESENTED

Whether or not the National Labor Relations Board properly found that Local 28, International Organization of Masters, Mates and Pilots, Inc., AFL-CIO, is not a labor organization within the meaning of Section 2 (5) of the National Labor Relations Act, as amended.

The names of the parties to this petition for review are as follows:

INGRAM BARGE COMPANY, Petitioner,

versus

NATIONAL LABOR RELATIONS BOARD, Respondent.

No. 17,193

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JURISDICTIONAL STATEMENT

This cause is before the Court on the petition of Ingram Barge Company to review and modify a final order issued by the National Labor Relations Board on April 18, 1962. Upon unfair labor practice charges filed by petitioner and The Texas Company, a consolidated complaint was issued (JA-4, et seq.) by the General Counsel of the National Labor Relations Board, on behalf of the Board and its Thirteenth Region, charging that Local 28, International Organization of Masters, Mates and Pilots, Inc., AFL-CIO, and others, had violated Section 8 (b) (1) (A) and Section 8 (b) (4) (A) and Sections 2 (6) and (7) of the Act. This Court has jurisdiction to review the final order of the Board under Section 10 (f) of the National Labor Relations Act, as amended, (61 Stat. 136; 29 U.S.C. Sec. 151 et seq.), the petitioner being the charging party and a "person aggrieved" by the denial of relief.

STATEMENT OF THE CASE

Ingram Barge Company (sometimes hereinafter referred to as "petitioner" or "Ingram"), a company engaged in the waterborne transportation of goods along the inland waterways of the United States, brought charges of violations of Section 8 (b) (1) (A) and Section 8 (b) (4) (A) of the Act against Local 28, International Organization of Masters, Mates and Pilots, Inc., AFL-CIO (hereinafter referred to as "Local 28") and Local 3, Associated Maritime Workers, International Organization of Masters, Mates and Pilots, Inc., AFL-CIO (hereinafter referred to as "Local 3"). Similar charges were filed by The Texas Company. These charges were filed in both the Thirteenth and Four-

After investigation, a consolidated complaint was issued covering the charges filed by Ingram and The Texas Company in both the Thirteenth and Fourteenth Regions. Those charges and the complaint in essence alleged acts of violence to persons and property and secondary boycott activity in connection with a strike against Ingram.

Neither Local 28 nor Local 3 filed an answer to the complaint but Counsel for these Locals did dictate an answer into the record shortly after commencement of the hearing before the Trial Examiner. While both Locals denied all of the allegations of the complaint, the particular denial at issue here is that whereby Local 28 denied that it is a "labor organization" within the meaning of Sections 2 (5) and 8 (b) of the Act.

After a full and comprehensive hearing which lasted several months, the Trial Examiner issued his Intermediate Report on December 30, 1960, holding, insofar as is pertinent here, that Local 28 was not a "labor organization" within the meaning of the Act. The Examiner did find that both Locals had engaged in acts of restraint and coercion which interfered with the exercise of rights of employees guaranteed by Section 7 of the Act. The Examiner predicated his conclusions as to Local 28 upon its having acted as an agent of Local 3.

On exceptions filed to the Intermediate Report, the Board, on April 18, 1962, affirmed the Intermediate Report in all material respects, and particularly restricted its order against Local 28 only to those acts which Local 28 committed in its capacity as agent of Local 3.

This petition for review has been brought solely to contest the holding of the Trial Examiner and the Board that Local 28 is not a "labor organization" within the meaning of the Act. The Company is aggrieved by that portion of the order of the Board and seeks review for the purpose of having that holding reversed, and for a decision that Local 28 is in fact a "labor organization" within the meaning of Section 2 (5) of the Act, and that consequently Local 28 has violated the Act as a principal and not just as an agent.

I. GENERAL FACTS

Ingram engages in the waterborne transportation of goods along the inland waterways of the United States. This business is accomplished by operating a fleet of towboats and barges. Generally, these boats are manned by crews consisting of a master, a pilot, one or more mates, one or more deckhands (some of whom may be classified as tankermen), a cook, and engine room personnel (usually a Chief Engineer, Assistant Engineer, and oiler, none of whom are involved in this proceeding.) (JA-19, 22)

For a number of years Ingram had labor agreements with Local 28, Local 3, and the Marine Engineers Beneficial Association (MEBA). The Local 28 agreement covered employees in the classifications of "master", "pilot", and "mate". The Local 3 contract covered deckhands, tankermen, oilers, cooks and cook helpers. The MEBA contract covered the engineroom personnel. (JA-22)

In April, 1958, negotiations were begun between Ingram and Local 3 for a new contract. These negotiations were unsuccessful and a strike was called by Local 3 on July 5,

1958. When Ingram brought replacements for the strikers aboard its boats, five in number at that time (the ARTHUR J. DYER, HORTENSE B. INGRAM, NELSON BROADFOOT, E. B. INGRAM, and ALICE INGRAM), the masters, pilots, mates, and engineroom personnel left the boats and joined the strike.

From the start of this strike in July 1958 through November 1958, Locals 3 and 28 went on a binge of threats and violence, running the gamut from rock-throwing to forcibly taking possession of a boat to throwing an Ingram employee into the Chicago River in complete disregard of his protestations that he could not swim. (JA-25 through 36)

These strike actions by Locals 3 and 28 prompted Ingram and The Texas Company to file the charges which gave birth to this case.

II. FACTS PARTICULAR TO THE ISSUE HEREIN

The overall personnel policies of Ingram are in charge of Mr. R. E. Bridges, its Vice-President. Immediately below him are the Port Captain (R. N. Cioll), Port Engineer, and Personnel Manager (George D. Hutcherson). The Port Captain's responsibility and supervisory authority are in relation to all employees in the classification of master and pilot. The Personnel Manager's responsibility and supervisory authority are in relation to all employees in the classifications of mate, deckhand, tankerman, and cook. (JA-65) The Port Engineer's responsibility and supervisory authority are in relation to all employees in engineroom classifications. In addition to its Port Captain, Port Engineer, and Personnel Manager, Ingram has reposed and

granted a limited amount of supervisory authority and function to each of the masters assigned to its tugboats.

All parties to this proceeding agreed that the master is a supervisor. He is the Company's agent and representative aboard the tugboat. He is directly and immediately responsible for all operations aboard his tugboat. The master is charged with responsibility for the conduct and performance of duties by his crew, and only he may discharge or layoff a crew member, subject to investigation by Ingram. Only the master may enforce discipline on his boat. Only the master has authority on his boat to entertain and handle grievances. The master may, in situations of an emergency nature, hire crew members. All other supervisory functions set forth in Section 2 (11) of the Act are exercised exclusively by Port Captain Cioll and Personnel Manager Hutcherson, and by the Ingram Port Engineer for engineroom personnel.

Among the master's administrative functions is the preparation of daily reports to the Company concerning the operation of the vessel, maintaining the ship's log, and preparing and submitting payroll records of the time worked by the crew. The master maintains a regular watch during which he performs the duty of a pilot in addition to his other duties.

The pilot's basic function is to steer and navigate the vessel, which steering is accomplished by the manual manipulation of various levers which determine the direction and speed of the tugboat. At the close of the master's watch, when he turns over the steerage of the boat to the pilot, he instructs the pilot with respect to the matters that

are to be accomplished or that might be anticipated during the pilot's watch. The pilot is told by the master that certain barges are to be tied on or off at various points along the route; that the tugboat is to "spot" the barges under tow at a particular dock where they may be loaded or unloaded, as the case may be; that a particular lock or canal is to be traversed; and any other information relating to movement of the vessel during the pilot's watch. The amount and comprehensiveness of the master's instructions to the pilot are based upon the degree that the master is willing to rely upon the pilot and his skill in navigating the tugboat.

The mates employed by Ingram fall into three classifications, to-wit: first mate (licensed), second mate (licensed), and second mate (unlicensed).

The licensed first and second mate are the most experienced members of the deck force (other than the master and pilot), and are paid considerably more than the second mate (unlicensed) and the other members of the "deck force" such as the tankermen and deckhands (G. C. Ex. 38, Art. VIII, Sec. 1). The mates, together with the deckhands and tankermen, are under the supervision of Ingram's Personnel Manager. (JA-149) The masters and pilots are under the supervision of the Port Captain. (JA-150)

The functions and duties of Ingram's mates depend on the size of the tugboat to which they are assigned. This is so since the classification and number of employees which make up the "deck force" aboard each tugboat are controlled by the boat's size. The smallest Ingram tugboat is the ALICE INGRAM which has but a single deckhand or

tankerman assigned to its deck force; while the largest is the E. B. INGRAM which employs approximately four deckhands and one tankerman. (JA-147, 148)

In the case of the tugboat ALICE INGRAM the "deck force" on the first watch consists of three persons, to-wit: the master, first mate (licensed), and deckhand. The "deck force" on the second watch consists of only two, to-wit: a pilot and second mate (unlicensed). No deckhand is ever on duty during the second watch when the pilot and second mate (unlicensed) are on duty. (JA-135, 141, 145, 248)

On the tugboat E. B. INGRAM the "deck force" during the first watch consists of at least four, to-wit: master, first mate (licensed), and two deckhands or tankermen. Likewise, during the second watch the "deck force" consists of an equal number of persons, except that a pilot and a second mate (licensed) are employed during said watch in place of the master and first mate.

There are two mates assigned aboard each of the tugboats, one for each watch. A first mate is assigned to the first watch and a second mate is assigned to the second watch. On tugboats such as the HORTENSE B. INGRAM

The following is an abstract of the testimony of Taylor and Brewer, who alternated every thirty days as second mate (unlicensed) aboard the ALICE INGRAM: Taylor testified that he was on duty during the second watch; that he comprised the entire deck crew during said watch — no deckhand was on duty during this watch (JA-135); and that he was at no time assisted in the performance of his duties by a deckhand. (JA-143) Brewer testified that the entire deck crew for both the first and second watch consisted of a first mate, second mate (unlicensed) and one deckhand (JA-247); and that the second mate (unlicensed) was assigned to the second watch, during which period he was the only member of the crew who was on duty — the deck hand did not work during the second watch. (JA-248)

and the ARTHUR J. DYER as many as four mates and two deckhands were from time to time assigned to the "deck force". Inasmuch as only two mates may give directions, the additional or excess mates were assigned to the job of deckhand and directed by one of the two mates in charge. Although employed as deckhands, these excess mates continued to be paid at the rate of a mate and maintained their place on the seniority list as a mate. (JA-227, 230) At all times these mates were members of Local 28 and were covered by the contract between Local 28 and Ingram.

There is basically no distinction between a first mate (licensed) and second mate (licensed). They are assigned to alternate watches. Both the mates and deckhands perform manual work. However, the mates, as the more experienced men, will sometimes instruct and direct the deckhands as to the performance of manual work.

The first and second mates are assigned various duties by the master, such as the care of the motor boat, pumping fresh water, and painting and maintaining the cleanliness of the tugboat. In addition, the master instructs the mates with respect to the dropping off and picking up of barges during the course of their watch.

As of July 1958, eight second mates (unlicensed) were employed by Ingram. (Resp. Ex. 26; JA-258) Except for their respective rates of pay, there is no distinction between a second mate (unlicensed) and an experienced deckhand or tankerman. He is considered to be nothing more than a "glorified deckhand" by the Company. (JA-166) The second mate (unlicensed) does the same amount of manual work as a deckhand. (JA-152) When he pumps barges, the

second mate (unlicensed) is paid the rate of a tankerman. $(JA-154)^2$

A second mate (unlicensed) is assigned to the second watch on the tugboat ALICE INGRAM and, except for the pilot, is the only employee on duty during said watch. (JA-135, 248) On other tugboats the second mate (unlicensed) is usually assigned as an excess mate and as such is required to take directions from the licensed mates in the same manner as a deckhand. (JA-228) In the same way as a deckhand, a second mate (unlicensed) chips, paints and scrubs the deck, splices cable, carries and takes on stores for the tugboat, cleans windows, loads and unloads barges, and mops the galley. (JA-138, 141, 142, 143, 192, 195, 197) The second mate (unlicensed) aboard the ALICE B. INGRAM was a "one man deck department" working with no employees other than the pilot.

All mates (whether licensed first and second mates or unlicensed second mates) are paid shorthanded pay when a deckhand or tankerman is absent. The amount of shorthand pay is shared equally between the mates and the remaining deck employees. (G.C. Ex. 36, Art. VIII; JA-153)

STATUTES INVOLVED

Labor Management Relations Act, 29 U.S.C. 151 et seq., 61 Stat. 136 —

"Section 2. When used in this Act-

²It is only with respect to this function that a second mate is required to be licensed.

"(3) The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include * * * any individual employed as a supervisor, or any individual employed subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined.

"(5) The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."

"(11) The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

STATEMENT OF POINT

The Board erred in holding that Local 28 is not a "labor organization" within the meaning of Section 2 (5) of the Act. Petitioner contends that Local 28 is an organization "in which employees participate." There is no issue and it is admitted that Local 28 exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

SUMMARY OF ARGUMENT

Ingram's business as a carrier of goods along the inland waterways of the United States is accomplished by operating a fleet of tugboats and barges. At the time this proceeding arose, Ingram operated five boats. These boats were manned by crews consisting of a master, a pilot, one or more mates, one or more deckhands (some of whom may be classified as tankermen), a cook, and engine room personnel (none of whom are involved in this proceeding).

It is Ingram's position that the master on each boat is the Company's representative on his boat, and the only person aboard (other than the Chief Engineer) with genuine supervisory authority. The Trial Examiner found that the pilots and mates also were supervisors, and the Board affirmed.

While Ingram does not concede the correctness of the Trial Examiner's holding as to the pilots, in recognition of the complexity and borderline nature of the pilot classification, Ingram has premised this appeal on the mate classification alone for the sake of clarity.

Ingram contends that the mates aboard its boats have none of the supervisory criteria listed in Section 2 (11) of the Act. The Trial Examiner bottomed his finding of supervisory status on the ground of "responsible direction" and did not find any other supervisory characteristics.

Ingram's position is that the mates do not "responsibly direct" other employees, in terms of the statute, but that such directions as are given by the mates are routine — the kinds of directions which a skilled or experienced workman will give to less skilled or capable fellow employees.

1. The legislative history of the Act clearly shows that Congress was concerned with and made a careful distinction between supervisors with "genuine management prerogative" and fringe employees who appear to have supervisory functions, but who are really in the category of "straw bosses" or "leadmen" — minor supervisory employees. These latter types Congress excluded from the "supervisor" category. It specifically did this by the qualifying clause,

.... "if in connection with the foregoing the exercise of such authority is not of a merely routine or

clerical nature, but requires the use of independent judgment."

- 2. The Trial Examiner relied principally for his finding of supervisory status upon the fact that mates were denominated as "officers", and that the labor contract said the orders of the "Master and of the licensed officers" shall be obeyed. The determination of supervisory status must be made on the basis of the employee's actual duties and authority, not upon his formal title, and not upon an agreement by the parties to a contract. Further, by the Board's decision making, the holding of a Coast Guard license does not per se support a finding of supervisory status.
- 3. The job duties of the mates lead inescapably to the conclusion that they are simply skilled and experienced employees whose directions to other employees, including other mates and the master or pilot are actually the kinds of directions given by a "straw boss" or "leadman", and not directions in the exercise of independent judgment, i. e., genuine management prerogative.

The directions given by mates arise in two general categories: (1) navigational and (2) maintenance. The navigational directions are given when a boat and its tow are maneuvering through a lock or restricted passage of a river, and when the boat is docking to load or unload or leaving the dock. The record shows that the mate tells the deckhand where to station himself and then takes his own station. Then the mate performs the same functions as the deckhand, handling lines and taking directions given by the master or pilot over a loudspeaker from the pilothouse.

In these docking or locking operations, mates may give directions to deckhands or, under certain circumstances, the deckhand may give directions to the mate.

In maintenance operations, the mate will tell a deckhand to do certain chipping, scrubbing, painting, et cetera, the performance of which has been ordered by the Master. The mate also does this same kind of work. The record shows that mates scrub decks, chip, paint, clean galleys, et cetera, just as do the deckhands.

Accordingly, an examination of the job duties of the mate shows that he is no more than a "straw boss" or "leadman" — a skilled and experienced employee with no genuine management prerogative.

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- 4. On at least one Ingram boat, the mate aboard stands watch alone, that is, with no deckhand on duty. The Board has repeatedly held, and we agree, that a supervisor is not a supervisor if he has no one to supervise.
- 5. The Trial Examiner did not believe the question of ratio important here. Ingram contends that this position is contrary to Board doctrine. The Board has held consistently that if the major supervisory criteria are absent and the question is only "responsible direction", then ratio is a significant, in some cases controlling, factor.

Here, if the Examiner's holdings were correct, the ratio on an average boat would be *five* supervisors (master, pilot, two mates, chief engineer) to *five* employees (two deckhands, cook, assistant engineer, oiler). This is obviously a preposterous ratio of supervision and immediately rings

the bell of caution in such a finding. On the other hand, if Ingram is correct, the ratio would be the logical, sensible supervisory ratio one would expect to find in a specialized operation like a boat, i. e., two supervisors (the master and chief engineer) to eight employees (pilot, two mates, two deckhands, assistant engineer, cook, oiler). The Examiner's theory of "all Chiefs and no Indians" is illogical, not in accord with the record, and contrary to Board doctrine.

6. The Trial Examiner has applied a de minimis rule to the unlicensed second mates, (JA-101) on the ground that Local 28 had a membership of 600 and Ingram employed only six unlicensed second mates. Ingram urges that there can be no valid de minimis rule here. The statute says, "... organization ... in which employees participate ..." If more than one employee participates, then the organization fulfills that portion of the description of a "labor organization" in Section 2(5).

Moreover, the record shows that Local 28 refused to respond to subpoenas issued by the General Counsel, thus effectively precluding an examination of the make-up of its membership. Under those circumstances, the Trial Examiner should have exercised a presumption against Local 28 on this issue, but he failed in that exercise.

Apart from the above, Local 28's contract with Ingram shows its representation of unlicensed mates and pilots, as well as "steersmen", and this alone is a sufficient showing of participation of non-supervisory employees.

ARGUMENT

MAY IT PLEASE THE COURT:

Ingram has contended in this proceeding that the masters and the chief engineers are the only supervisory personnel aboard the Ingram boats and that the pilots and the mates, both first and second, licensed and unlicensed, are employees within the meaning of the Act. On the other hand, Local 28 has contended that it is not a "labor organization" within the meaning of Section 2(5) of the Act, that contention being based upon the assertion that only supervisors are admitted to, or are eligible for, membership in Local 28; specifically, Local 28 contends that pilots and mates are supervisors. The Trial Examiner has found all pilots and mates, of every kind and description, to be supervisors within the meaning of Section 2(11), and that consequently Local 28 is not a "labor organization".

A. Legislative History

Section 8(b) of the Act spells out the kind of activity for which "It shall be an unfair labor practice for a labor organization or its agents" to engage, and Section 2(5) defines the term "labor organization", "when used in this Act, as—

"... any organization of any kind ... in which employees participate and which exists for the purpose in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." (Emphasis supplied.)

Local 28 and the Board concede that Local 28 exists for the purpose of dealing with employers concerning the wages, hours and conditions of employment of its members employed as masters, mates and pilots. The question presented, therefore, is: Do any employees participate in Local 28?

In N.L.R.B. v. Edward Budd Manufacturing Company, 169 F. 2d 571, (C. A. 6), certiorari denied, 335 U.S. 908 (enforcing 68 NLRB 612), a contention apposite to the one made by Local 28 in the instant case was presented. The Court ruled that despite the supervisory character of the Foreman's Association, it was nevertheless a labor organization within the meaning of the Act, because under its constitution "employees" were eligible for membership. The Court stated:

"Although the definition requires that employees participate in the organization in order to make it a labor organization, it does not require that the organization be composed exclusively of employees. The fact that persons other than employees are members of a labor organization does not prevent a labor organization, which is otherwise qualified, from continuing to so function. N.L.R.B. v. American Furnace Co., 7 Cir., 158 F. 2d 376, 378; N.L.R.B v. Jas. H. Matthews and Co., 3 Cir., 156 F. 2d 706. This view is recognized by the provision of the amendment providing that 'nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, . . . even though the employer need not recognize them as employees for purposes of collective bargaining.' 29 U.S.C.A. § 164(a). The constitution of the Foreman's Association shows that it admits to membership persons who are not supervisors but who are employees within the meaning of the amended Act. We are of the opinion that on the present record the Foreman's Association qualifies as a labor organization under the provisions of the Act."

It follows that the question of whether Local 28 is a labor organization must be answered in the affirmative if any two or more of the mates or pilots that it represented or sought to represent, are "employees" within the meaning of the Act.³

Section 2(3) of the Act excludes from the definition of the term "employee", and therefore from the protection of the Act, "any individual employed as a supervisor." Section 2(11) of the Act defines the term "supervisor" as:

"... any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

The Constitution of Local 28 admits into membership masters, mates and pilots. Unlicensed as well as licensed mates and pilots are eligible and admitted as members of Local 28.

The legislative history of the Act makes it abundantly clear that the purpose of Section 2(11) was to exclude from the Act's coverage only those employees who are regularly and actually vested with "genuine management prerogative" in relation to subordinate employees. Congress was careful to limit the definition so as not to include "minor supervisors." In considering and explaining Section 2(11) the Senate Committee stated:

"In drawing an amendment to meet this situation [unionization of foremen], the committee has not been unmindful of the fact that certain employees with minor supervisory duties have problems which may justify their inclusion in the Act. It has therefore distinguished between straw bosses, leadmen, set-up men, and other minor supervisory employees, on the one hand, and the supervisor vested with such genuine management prerogatives as the right to hire or fire, discipline, or make effective recommendations with respect to such action" (Emphasis supplied) (S. Rep. No. 105 on S. 1126, 80th Cong., 1st Sess., p. 4).

"In framing this definition, the committee exercised great care, desiring that the employees herein excluded from the coverage of the Act be truly supervisory." (ibid. at p. 19).

In Ohio Power Company, 80 NLRB 1334, 1338, the Board reviewed the legislative history relative to the supervisory

amendments of the Labor Management Relations Act and observed that:

"Legislative history indicates, however, that the broad scope implied in a literal construction of the authority 'responsibly to direct' was not intended by Congress, but rather that a specific qualified meaning attach to this phrase."

The Board then pointed out that Senator Flanders who introduced the amendment to include the words "responsibly to direct" sought to encompass individuals who are regularly engaged in acts of supervision but who do not exercise other specific powers enumerated in the definition contained in Section 2(11). These individuals, Senator Flanders stated, exercise the remaining "basic" functions of supervision and still "are above the grade of straw bosses, leadmen, set-up men and other minor supervisory employees." 93 Cong. Rec. 4804; Legislative History of LMRA,, Vol. 2, p. 7303.

Nothing is found in the case of Ohio Power Company v. NLRB, 176 F. 2d 385, 11 ALR 2d 243, which alters the legislative intent described above. Also, see NLRB v. Quincy Steel Cast. Co., 200 F. 2d 293, 296 (C.A. 1) and Marine Engineers Ben. Assn. v. Interlake Steamship Company, 370 U.S. 173, 82 S. Ct. 1237 (1962), Notes 5 and 6.

B. The "Officer" Contention

The Trial Examiner found merit in the contention of Local 28 that the pilots and mates are "officers" and, therefore, responsibly direct other employees, exercising independent judgment.

Upon a reading of the entire record in this matter, we are constrained to observe that the Trial Examiner was sold a title, so to speak, and is unduly impressed with the idea of "command function." It appears that the Examiner became lost in the romance of the sea and was thinking in terms of ocean-going vessels or, at least, vessels which travelled the waterways under steam power many years ago with large complements in the deck crew. He has failed to recognize that in these modern days of water transportation, the Diesel-powered tugboats carry a much smaller crew and there is not the formality which once existed regarding officer personnel. One of the effects of the modern-day use of Diesel power is that the pilots and mates aboard these tugboats are no longer covered or regulated by the United States Coast Guard or any other licensing or regulatory governmental agency. The fact that some of the pilots and mates possess a license has no necessary relationship to the jobs which they perform. They would have qualified to perform the duties of the jobs in question regardless of a license, and, in fact, as the record shows, many of the pilots and mates do not have licenses. A Coast Guard license relates only to the established skill and experience of the particular employee, and does not vest him with management authority in relation to subordinate employees in the Ingram tugboat operations.

It is well settled that in determining supervisory status, the "important thing is the actual duty and authority of the employee, not his formal title." N.L.R.B. v. Quincy Steel Casting Co., 200 F. 2d 293, 296 (C.A. 2); F. B. Silver

woods, 92 NLRB 1114; Emerson Television Service Corp., 88 NLRB 55; Western Electric Company, Incorporated, 126 NLRB 1346. The contention that many of the mates and pilots exercise a "command function" is nothing more than a theoretical claim of a power that is in no way required in the performance of their jobs, and does not in fact exist. N.L.R.B. v. Leland-Gifford Co., 200 F. 2d 620, 625 (C.A.1),

Recently the Board expressed its views and policies with respect to the factors which are germane and controlling in determining whether marine employees are supervisors. In *Graham Transportation Company*, 124 NLRB 960, the Board held that it will not find that marine officers are supervisors in the absence of evidence that they actually possess authority to direct other than routine work or make effective disciplinary recommendations. The Board stated:

"We also find no merit in BME's final contention that some of the engineers involved herein are supervisors because they are licensed by the United States Coast Guard. In determining the supervisory status of marine engineers, whether or not they are licensed, we have always utilized the same tests which are applicable in other industries. Thus, where it has been clearly established that marine engineers have the authority expressed in Section 2(11), we have found them to be supervisors, but where they possessed no such authority, we have found them to be non-supervisors. To be sure, the Board has customarily treated licensed marine engineers as supervisors, but in those cases, it was clear from the

size of the ship and crew that there were other engine room personnel for the engineers to supervise. The fact that a marine engineer possesses a Coast Guard license does not alone support a finding of supervisory status." (Emphasis supplied)

Consistent with its position that no theoretical power of command automatically flows from the existence of a marine license, the Board, in Sabine Towing Company, Inc., (Local 333, United Marine Division, National Maritime Union, AFL-CIO), 126 NLRB 61 (1960), decided that all crew members employed aboard a tugboat, including masters and chief engineers, but excluding all supervisors, constitute an appropriate unit for the purpose of collective bargaining within the meaning of the Act.⁴

The Graham Transportation case, we submit, is a dispositive answer to the rationale by the Trial Examiner here that since the contract recognized the pilots and mates as "officers", it must necessarily follow that they had supervisory authority.

C. Functions Of The Mate

We have heretofore generally stated the record facts with regard to mates. At this point it seems worthwhile to point to more specific references to mates in the record:

⁴In the Sabine case, the Board noted that the record before it did not show that the masters actually possessed supervisory authority. In the case at bar it is conceded that the master is a supervisor.

Witness Drury testified that, on the boats with which he is familiar, there is a "lead deckhand" on duty when the mate is off watch and this "lead deckhand" communicates signals to the pilot, much as the mate would do if he were there, and conveys the directions to the deckhands as well (JA-124). He further testified that the lead deckhand gives "orders" (JA-126).

Witness Grant testified that, on boats with which he is familiar, the mate receives instructions from the master (JA-127), and generally the mate is out on the head of the tow (the barges) directing the pilot in his navigation (JA-128). Grant also testified as to the relationship of the mate in these words: (JA-128)

- "A. Yes, sir, but I look at it a different way.

 The mate is out there to tell me, to direct me
 to hold it up. That is what I have him out
 there for.
 - Q. I see now. Your mate then maintains authority over the master on your vessel?
 - A. Not authority. It is a matter of working together." (Emphasis added)

Grant further stated that the mate is really "assisting the man at the wheel" (JA-128). Further, that sometimes, instead of the mate being on the head of the tow, there might be a deckhand, and this deckhand would do the same things as the mate would do were he on the head of the tow (JA-130). Again, witness Grant pointed out that the relationship of the mates with the other people on the boats was a "team work" proposition: (JA-132)

Witness Taylor pointed out that all of the deck personnel engaged in manual labor, including the mates, first and second. (JA-141, 142)

Personnel Manager Hutcherson's testimony aids in an understanding of the employee ratios. From his testimony, it is shown that on the largest of the Ingram boats, you generally have two mates, one deckhand and one tankerman (JA-147). On the smallest of the Ingram tugboats, there are two mates and one deckhand (JA-148). We find again in Hutcherson's testimony the reference to "team work". (JA-152)

- "THE WITNESS: The mates do just as much work as all the other personnel. They work as a team every man works.
- Q. (By Mr. Carter) Mr. Hutcherson, describe some of the things you observed the mates do with their hands during the period June 1957 to June 1958?
- A. Well, they pull on the wires, put them on the barges, pull on the lines, in fact, anything else that is needed. In other words, the mates' job on there is just exactly like the rest of the men, if they don't work as a team the work won't be accomplished. I might add that a good mate he might do a little bit more work than the rest of them." (Emphasis added)

Hutcherson also pointed out that certain extra-work compensation, in connection with unloading and loading

barges, is shared by the mates and tankermen-deckhands. (JA-154)

Hutcherson also corroborated that mates engage in the normal kinds of manual work aboard the boat, such as chipping, painting, scrubbing, splicing cable, cleaning windows, taking coffee to the master, etc. (JA-193, 194)

Port Captain Cioll testified with particularity about the inter-communications aboard the boats which permit the master or pilot in the pilothouse to communicate with the various members of the deck crew directly in connection with any instructions having to do with the navigation of the boat and its tow (JA-162). In response to questions on cross-examination, Cioll pointed out the similarity of work by the mates and deckhands (JA-168). Cioll further pointed out that mates give "directions" to other mates (JA-173). Also, deckhands give "directions" to mates (JA-175-176).

- "Q. (By Mr. Carter) Would you give us an example of the kind of direction a mate gives to a deckhand or a deckhand to a mate?
 - A. Let's say you got a strong wind which is not too unusual or uncommon and you are coming down the river with an empty barge and you are coming into this lock and you have to put out lines to help the pilot or master get into the locks safely and you have a couple of lines out and the deckhand or the mate either one, one of the lines they were us-

ing started going into the river he would holler to the other man, 'grab that line.'"

Cioll further corroborated the testimony of other witnesses that mates do about the same amount of painting as deckhands (JA-177). Then, in connection with the idea of "team work", Captain Cioll pointed out that a mate may be reprimanded for not complying with a "direction" from a deckhand (JA-180).

Witness Callis made clear that the mate handles lines during a docking operation just as do the deckhands (JA-220). Also, and we think this is quite significant, coming from a Respondent witness, Callis affirmed that the work of the mate and deckhand together is a matter of "team work." (JA-220).

Witness Lucas also affirmed that the relationship of the mates and deckhands is one of "team work": "They operate in a team" (JA-232). This witness pointed out that the mates and deckhands are all handling lines during docking or locking operations (JA-232, 233). Interestingly enough, Lucas also testified that it was quite usual and normal for the deck crew to consist of three mates and one deckhand on the Ingram boats, in which case a second mate would operate as a deckhand (JA-233).

Although we hold a contrary view to that of the Examiner in connection with the weight to be given to witness Jess Marks due to the fact that he is the master of the largest boat on the inland water (JA-235) and therefore his testimony would have no proper relationship to the very small boats used by Ingram, still we believe it is of

considerable significance to study the description given by Captain Marks of a locking operation, commencing at JA-238 through 241. This testimony clearly indicates that the mate, just as the deckhand, is working as a part of a team and is handling a line, just as is the deckhand, and there is absolutely no difference in the work being accomplished by either one of them. Further, the directions are being given equally to the deckhand and the mate and there is no difference between the two classifications in connection with their work and authority. We can only conclude, and submit to this Court, that this testimony of Captain Marks adds up to just one thing, "team work." A good indication of the difference between boats Captain Marks is familiar with and the smaller boats is the fact that his boat carries from seventeen to twenty-six people in its crew, and it should be noted that he testified that in the smaller crews there is a position called "head deckhand" instead of mate (JA-242). Captain Marks then explained: "You get down to a head deck hand category, where I don't - his duties, the head deck hand, of course, is all the duties of a deck hand plus a few other duties tied in with it." (JA-242). Captain Marks also commented that if only two lines are to be handled, and you have two deckhands, the two deckhands handle the lines. But, under the same circumstances, if there were three lines to be handled. "Then the mate would get a line in the interest of cooperation." (Freely translated, we submit this means that the mate is, as characterized by Captain Cioll, a "glorified deckhand"). (JA-242).

This review of the witnesses who testified regarding the work of mates has been complete, with the exception of witness Coats. We were unable to give any reference to testimony by Coats since counsel for Ingram was effectively stopped by the Trial Examiner from generating any effective cross-examination. Further, we would in passing suggest that Coats' testimony is not of great worth since he was obviously a prejudiced witness and was considerably discredited in connection with his testimony as to the deck complement. He originally testified that there was never a situation where a boat had four mates and two deckhands aboard at the same time. Then, at JA-226, he was confronted with Respondent Ex. 53-A, which showed that on the July 1 payroll, as an example, there were four mates and two deckhands aboard at the same time, a period during which he was the master of the vessel.

From the congeries of testimony regarding mates, the following conclusions arise:

- (1) There is no substantial difference between first and second mates, licensed mates and unlicensed mates.
- (2) The composition of mates aboard a given boat may vary, from a minimum of one mate vis a vis three deck hands, to the extreme of four mates vis a vis two deckhands, and, on the ALICE INGRAM, two mates vis a vis one deckhand.
- (3) The mates do substantially the same kind of manual labor as the deckhands, i. e., handling of lines during docking, locking, and unloading operations, handling of valves during loading and unloading operations, chipping, scrubbing, painting, bringing coffee to the master, cleaning windows, and other such odd jobs, and that such manual labor

is done in amounts substantially similar to that done by the deckhands.

- (4) Mates receive instructions from the master and/or the pilot having to do with the navigation of the vessel, plans as to docking, locking, and unloading, sometimes receiving those instructions without the deckhands being present, and at other times with the deckhands present; the mates then instruct or direct the deckhands (and other mates) on the basis of the plans as outlined, but such instructions or directions are routine, in the nature of messages rather than independent thoughts.
- (5) While the docking, locking, or unloading operation is actually taking place, the mates perform the same type or amount of manual labor as the deckhands, receive instructions from the pilot house over the public address system, just as do the deckhands, and are in no different position from the deckhands in carrying out such work. In all of these operations, the key description is "team work", the mates giving directions to deckhands at times and, at other times, the deckhands giving instructions or directions to the mates. Such instructions or directions are merely routine, e. g., "take up the slack in your line," and such directions pass freely between the mates and the deckhands, both operating in conjunction with the master or pilot, whoever is navigating the boat at the time, and wholly and entirely as a navigational aid to the master or pilot.
- (6) The mates have no authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, discipline, adjust grievances, effectively recommend any

such above actions, or direct responsibly any employees by the use of independent judgment.

Turning now particularly to the unlicensed second mates, it will be noted that this classification gave the Trial Examiner great concern. (JA-70 et seq., and 100 et seq.) Second Mate Taylor testified that he was an unlicensed second mate aboard the ALICE INGRAM; that on that boat the crew consisted of a captain, pilot, engineer, assistant engineer, cook, one first mate, one second mate, and one deckhand (JA-134). He further testified that when he was on shift, the only other people at work were the pilot and assistant engineer (JA-135). Taylor compared his work to that of a tankerman (JA-136). He further stated that he had no authority to tell a deckhand what to do (JA-140). Also, that there was no deckhand on duty with him except in an emergency (JA-141). Taylor testified further that he and the first mate and the deckhand "all did the painting." (JA-141). At JA-142, he was asked the question:

- "Q. The one deckhand cleans the galley?
- A. He cleans the stove while on watch and whoever was running the other watch, as I was, would clean the hall and mop up before the cook comes on watch and also clean up the shower."

Taylor further testified at JA-142, 143 as to manual labor done by the first mate and the second mate, as follows:

- "Q. Who does that painting?
- A. The mate instructs the painters as to where to paint.

- Q. Who actually does the painting?
- A. The mate and myself, the deckhand on watch if he is not needed on the tow and when he is on watch he paints.
- Q. You say the mate does it too, does the mate actually do it?
- A. He helps to do it, yes, sir.
- Q. Now, you also spoke, in your cross-examination, of mopping up the galley. Who did that at the time you were on watch aboard the Alice Ingram?
- A. Sir, I did my part of it. After watch, I mopped the galley just before the cook came on watch, I mopped the base and the shower.
- Q. You did that yourself?
- A. Yes, sir."

At JA-144, counsel for Respondent admitted that "the only vessel he (Taylor) served on while a second mate was the ALICE INGRAM." That admission seems borne out by the record. However, the Trial Examiner, having difficulty with this classification anyhow, chose to disregard the facts (JA-71) by stating that "Taylor testified that after he became a second mate he served on other Ingram boats besides the ALICE INGRAM." We have reviewed Taylor's testimony and find no such reference. This error takes on considerable significance when it is realized that it played a substantial part in the conclusions reached by the Trial Examiner, (JA-100 et seq.)

Witness Brewer testified similarly to Taylor in connection with his status as an unlicensed second mate (JA-245-248).

Accordingly, on the basis of all of the testimony regarding the ALICE INGRAM, it appears clear that the deck crew on that boat generally consisted of a first mate, second mate, and deckhand; that the first mate and deckhand stood the fore watch and the second mate stood the aft watch by himself. Consequently, the second mate could not be a supervisor since he had no one to supervise. Contrary to the assertions of the Trial Examiner in his Intermediate Report, it is plain that Taylor and Brewer spent all of their time on the ALICE INGRAM after they became unlicensed second mates, and their status, therefore, was not a varying matter.

Turning now to the law as it applies to the mates generally, it should first be borne in mind that the mates have no authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, discipline, adjust grievances, or effectively recommend such actions. Of this there can be no doubt. The Trial Examiner, leaning as far as he could, still did not go beyond the "responsibly to direct" language in holding the mates to be supervisors. This, as will hereafter be pointed out, makes a considerable difference.

Bearing the above facts in mind, we urge that there can be no material distinction between the mates in this case and the following: The "chief mechanic" in N.L.R.B. v. Newton Co., 236 F. 2d 438, who was more experienced than the three mechanics working with him, who gave directions to those mechanics in the performance of their work but who did the same work as the other mechanics, and was simply a more skilled craftsman.

The machinist in N.L.R.B. v. Parma Water Lifter Co., 211 F. 2d 258, who worked with another machinist and an apprentice and sometimes assigned work to them but had no authority to hire, discharge, discipline, etc.

The "sound mixer" in N.L.R.B. v. Esquire, Inc., 222 F. 2d 253, who signalled the operator of a boom microphone when the sound was not picked up properly.

The "assistant supervisor" of the accounting department in N.L.R.B. v. Whitin Machine Works, 204 F. 2d 883, who had charge of the accounting department in the absence of the supervisor, generally relayed orders of others, and had no authority to hire, discharge, etc.

The employee in *Poultry Enterprises*, *Inc. v. N.L.R.B*, 216 F. 2d 798, whose primary duties were to maintain trucks and machinery and do other manual work in the plant, and assigned others to positions in the production line.

The plant clerk in N.L.R.B. v. Swift & Co., 240 F. 2d 65, who kept records relating to production, shipment and costs, and operated scales for measuring production of five employees, instructed employees where to place and when to move certain products, and assumed responsibility in their department in the absence of the foreman.

The "unit supervisors" in N.L.R.B. v. Southern Bleachery and Print Works, Inc., 256 F. 2d 235, who were responsible for the correct printing of cloth, decisions as to material requirements, and mechanical replacements, having authority to check them, their duties being those customarily exercised by skilled craftsmen and their helpers.

Although the Trial Examiner regarded these cases, and other general cases as "totally inapt" (JA-98), we submit that these cases form a solid and constructive pattern for a consideration of the status of the mates herein. These cases show quite clearly that where persons alleged to be supervisors do not have any of the truly supervisory indicia, their "responsible direction" must be genuinely supervisory in nature and not simply routine, mechanical, or directions such as are given by a skilled craftsman to one less skilled.

Although the Trial Examiner may be caught up in the romance of the sea, particularly when he says "the most cursory appraisal of the swift on-the-spot judgments of pilots and mates and the orders given pursuant thereto while maneuvering 1,000-foot tows in the face of unpredictable winds, currents, and weather conditions" cause him to find it a "sheer implausibility" that such judgments and orders are routine, still the fact is, as shown by the thousands of pages of record herein, that such "orders" as are given by mates are nothing more than mechanical and routine. Query: Can it be said that there is any independent judgment to be used by a mate when the master or pilot (depending on which watch it is) is standing in the pilot house with a public address system available to him to give directions to any member of the deck force, whether a deck-

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hand or a mate, in the performance of his job. Throughout this record, the witnesses for the unions, at the great urging of Local 28, attempted to "sell a bill of goods" that a master or pilot with a public address system at hand would give a direction to a mate (which would be heard by the deckhand as well) and then have the mate transmit that same direction to the deckhand. Only the gullible could believe that this unrealistic transmittal of orders would take place. It is obvious, as pointed out by Captain Cioll on several occasions, that if directions need be given, they are given by the master over the public address directly to a deckhand. The deckhand may be several hundred feet displaced from the mate. It would be the height of nonsense in such a situation for the master to instruct the mate, an instruction heard as well by the deckhand, and then await the transmittal by the mate to the deckhand. If there is any "sheer implausibility", in the Examiner's words, this would be it.

Can it be said that there is any responsible direction being exercised in giving an instruction to a deckhand to "pull up the slack in your line" when, at the same time, the mate is either taking up slack or letting out slack in his own line. The mate is doing the same kind of work as the deckhand and may, indeed does, receive similar directions from the deckhand. This all must be distilled to the words "team work" since it is all that is involved in the docking, locking, and unloading operations performed by the mate and deckhand.

We could belabor this brief with other instances of the conduct by the mate of his job, but it would add up to the same thing: He is the more experienced, presumably, of

the deck force and is acting as a "straw boss" or a "lead-man", acting as the head member of a team that is aboard the boat to perform manual labor in connection with the navigation and handling of the boat and its tow. Viewed in that light, the only view available from an objective appraisal of the record, it cannot be gainsaid that the mates are in no different position or status from that of the employees in the cases enumerated above, commencing with the Newton case. As this Court aptly said in Int'l Union of Brewery Workers v. N.L.R.B., 298 F. 2d 297 (1961):

"He must then, when acting, become in effect a part of management, not simply a lead man or straw boss."

To the same effect, Local 636 v. N.L.R.B., 287 F. 2d 354 (1961).

 D. A Supervisor Is Only a Supervisor If He Supervises Someone.

Turning now to the question of the unlicensed second mates: Here we have a group of at least six, and we believe the record shows eight, employees who are the least experienced and qualified among all the mates. In certain instances, particularly aboard the ALICE INGRAM, they work with no deckhands at all. Hence, there is nobody for them to supervise. We cannot perceive any distinction between these second mates and the second engineer in the case of *General Foods Corp.*, *Birdseye Division*, 110 NLRB 1088, in which case the Board held:

"It is clear from the record that the second engineer performs no supervisory duties when substituting for the chief engineer as there are no other engineering employees to supervise."

In National Maritime Union (Standard Oil Co.), 121 NLRB 208, enforced 274 F. 2d 167, the Board had before it a similar situation. The Board held that an engineer, without any kind of help, and no one to supervise, was not a supervisor within the meaning of the Act. Also, in this same connection, see Graham Transportation Co., 124 NLRB 960, where fifteen licensed and unlicensed engineers employed aboard six vessels were found to be employees since they had no employees under them to supervise.

On the basis of these clear-cut holdings, we submit that there is no ground whatever for holding the unlicensed second mates, particularly those aboard the ALICE IN-GRAM, to be supervisors. The Trial Examiner relied upon Globe Steamship Co., 85 NLRB 475, and Wilson Transit Co., 80 NLRB 1476. A proper reading of these cases brings immediately the substantial distinction which makes them inapposite. In the Wilson Transit case, the mates actually had the supervisory authority to hire and fire. In the Globe Steamship case, the assistant engineers were the "controlling head" during their watches; furthermore, they had the power of effective recommendation as to hire, discharge, etc., and even the power to discharge and settle grievances at times. Accordingly, these cases stand for nothing except a comforting pad to the casual reader of the Intermediate Report.

E. The Ratio Question

The Trial Examiner discussed the problem of ratio, and decided that "it is only a factor to be considered with all others." We would not quarrel with that proposition. On the other hand, there is more that needs be said about this question of ratio. The proper rule, as we appreciate it, that stems from the ratio cases is that the Board will not consider ratio as a factor if the employee in question clearly has any one of the specific supervisory indicia. On the other hand, if the Board finds that the only factor being relied upon is that of "responsible direction", it will then look into the ratio. If it finds that the ratio is disproportionate, that is, that there is a higher than reasonable number of supervisors to employees, then it will make its decision based upon ratio as the controlling factor. Perhaps the best illustration of this principle is shown by the case of Pennsylvania Power & Light Company, 122 NLRB 293. In that case the Board said:

"There is one other factor in this case, which the Board has consistently deemed highly persuasive in the ultimate determination of supervisory status, to-wit: The ratio of supervisors to rank and file employees."

The Board then went on to discuss the various engineering employees and found that the ratio of 4 to 5 for senior project engineers, 5 to 7 in the civil engineering division, and 4 to 4 in the mechanical research division, were disproportionately high, and then said: "In similar situations, the Board has found the disputed categories not to be supervisors." The Board went on with several other classifi-

cations and made the same holding (see Senior Relay Engineers, Senior Voltage Control Engineers, Local Test Engineers.)

In The Accurate Threaded Products Co., 123 NLRB 1939, the Board held that one supervisor to three employees was a "highly unlikely ratio." For other examples of disproportionately high ratio, see U. S. Gypsum Co., 121 NLRB 370; U. S. Gypsum Co., 118 NLRB 20 (1 to 3); Toledo Board of Trade, 117 NLRB 1504 (3 to 1); Peoria Journal Star, 117 NLRB 708 (4 to 4).

This is not to say that there are not instances where high ratios are upheld by the Board. But in those cases, a study of the decisions will indicate that there is one good valid reason for doing so, namely, that the employees are so wide-spread that supervision must be decentralized. See Washington Coca-Cola Bottling Co., 117 NLRB 1163.

All of which brings us full circle on this question of ratio. We believe that these cases point up the fact that the ratio question only comes into play where none of the supervisory indicia are present except the question of direction. Then, the true question is whether the direction is "responsible", i.e., with the exercise of independent judgment, or whether it is routine and mechanical. Where, as we have shown, the "directions" are routine, similar to those of a skilled craftsman toward less experienced craftsmen, ratio becomes the controlling factor.

Accordingly, let us look at the ratios involved here: On the largest Ingram boats, the crew contains ten persons, consisting of a master, pilot, first mate, second mate, two deckhands, chief engineer, assistant engineer, oiler, and cook. Ingram has taken the consistent position that there are two supervisors aboard, the master and the chief engineer. This would give a ratio of 1 to 5, or, considering only the deck force, 1 to 6 (the master vis a vis pilot, first mate, second mate, two deckhands, and cook). On the other hand, if the Trial Examiner's view was accepted, the ratio would be 5 to 5 (master, pilot, first mate, second mate, chief engineer vis a vis two deck hands, assistant engineer, oiler, and cook). This is precisely the kind of disproportion which the Board does not accept.

Now let us examine the ratio on the smaller boats, such as the ALICE INGRAM. That boat has a crew made up of master, pilot, first mate, second mate, one deckhand, chief engineer, assistant engineer, oiler, and cook. If Ingram is correct, the ratio would be 2 to 7, or approximately 1 to 3 1/2. On the other hand, if the Trial Examiner were correct, the ratio would be 5 to 4. About the best that can be said for the Trial Examiner's theories in this case is that he believes in "all Chiefs and no Indians." The Board has consistently refused to accept that doctrine. We submit that no departure is warranted here.

F. The De Minimis Theory

The Trial Examiner sloughed off the contentions made by Ingram regarding the unlicensed second mates by citing the case of National Marine Engineers Beneficial Ass'n. v. N.L.R.B., 274 F. 2d 167, with the language of the Court that the question of non-supervisory engineers "becomes somewhat less shattering when examination of the petition discloses that the number of employees in question was two." This was said in connection with the proposition that Local 28 had a membership of about six hundred. The inference being made was that if the General Counsel showed that only six unlicensed second mates were involved in the Ingram organization, that there was some sort of "de minimis doctrine" applicable.

In that connection, the record in this case shows clearly that Ingram had at least six unlicensed second mates among its employees, out of a total of masters, mates and pilots of approximately forty (See JA-61). These unlicensed second mates were members of Local 28 and Local 28 represented them in collective agreements with Ingram. The record further shows that Local 28 refused to respond to subpoenas duces tecum and subpoenas ad testificandum. The General Counsel sought by these subpoenas to adduce testimony regarding the membership of Local 28, its composition, and other like information. The willful and deliberate refusal by Local 28 to respond to those subpoenas, to disclose information peculiarly within its knowledge and control, gives rise to a conclusive presumption that such evidence would have been adverse to its legal position in that it would have disclosed that the membership of Local 28 includes non-supervisory personnel in addition to the pilots, mates, including unlicensed second mates, employed by Ingram. 2 Wigmore, Evidence (5th Ed.) Sec. 28; N.L.R.B. v. Ohio Calcium Company, 133 F. 2d 721, 727 (C.A. 6); N.L.R.B. v. Remington Rand, Inc., 94 F. 2d 862, 972 (C.A. 2); Whitin Machine Works, 100 NLRB 279, 285.

Although the Trial Examiner exercised this presumption in connection with the Section 8(b) (1) (A) aspects of the case, his theories regarding Local 28 not being a labor or-

ganization would have suffered greatly by its exercise on this issue, as a consequence of which he fell into the inconsistency of refusing to exercise this necessary presumption with regard to the status of Local 28. (JA 57; cf. 101)

Despite that, however, we suggest that Ingram has fulfilled the advice given by Judge Friendly in the M.E.B.A. case, supra, by making a record here which shows that Local 28 includes in its membership both licensed and unlicensed employees, that unlicensed second mates having no supervisory authority are assigned to watches where they work alone, doing all of the manual and physical deck work required during said watch, that the by-laws of Local 28 expressly make eligible for membership such unlicensed marine employees, including unlicensed second mates and pilots. Ingram has clearly and amply borne the burden of establishing the existence of non-supervisory personnel and employees who participate in and comprise a segment of the membership of Local 28. It may well be that the ratio of supervisors vis a vis employees making up the membership of Local 28 is greater than that indicated by the record herein; or that there are additional marine classifications admitted into membership of Local 28 who are "employees" and on whose behalf Local 28 has collectively bargained. By refusing to testify and by resisting the disclosure of its records, Local 28 has prevented the development of the kind of record contemplated by Judge Friendly. However, we urge that the record has been sufficiently established to show that Local 28 is a "labor organization" within the meaning of Section 2(5) of the Act.

CONCLUSION

Ingram submits that the record as a whole shows that mates aboard its boats are vested with none of the specific supervisory characteristics listed in Section 2(11) of the Act; that any "directions" given by the mates are of the kind given by a skilled employee to one less skilled, and such "directions" are not of the kind contemplated by Congress when it legislated in terms of "responsibly to direct." These "directions" are routine, do not require the use of independent judgment in terms of genuine management prerogative, and are the actions normally taken by a straw boss or leadman.

Accordingly, Ingram prays that the Board's Order be set aside insofar as it holds that Local 28 is not a "labor organization", and that an appropriate decree issue making Local 28 responsive to the Board's Order as a principal as well as an agent.

Respectfully submitted,

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By:______Attorneys for INGRAM BARGE COMPANY

March 30, 1963

CERTIFICATE

I hereby certify that the attorney for the National Labor Relations Board, Mr. Marcel Mallet-Prevost, Assistant General Counsel, Washington 25, D. C., has been served with a copy of this brief by the depositing of same in the United States Mail, first class postage paid, addressed as above, on this 29th day of March, 1963.

(Signed) By: STEPHEN B. LEMANN

IN THE

United States Court of Appeals

District of Columbia Circuit

No. 17,193

INGRAM BARGE COMPANY,
Petitioner,

versus

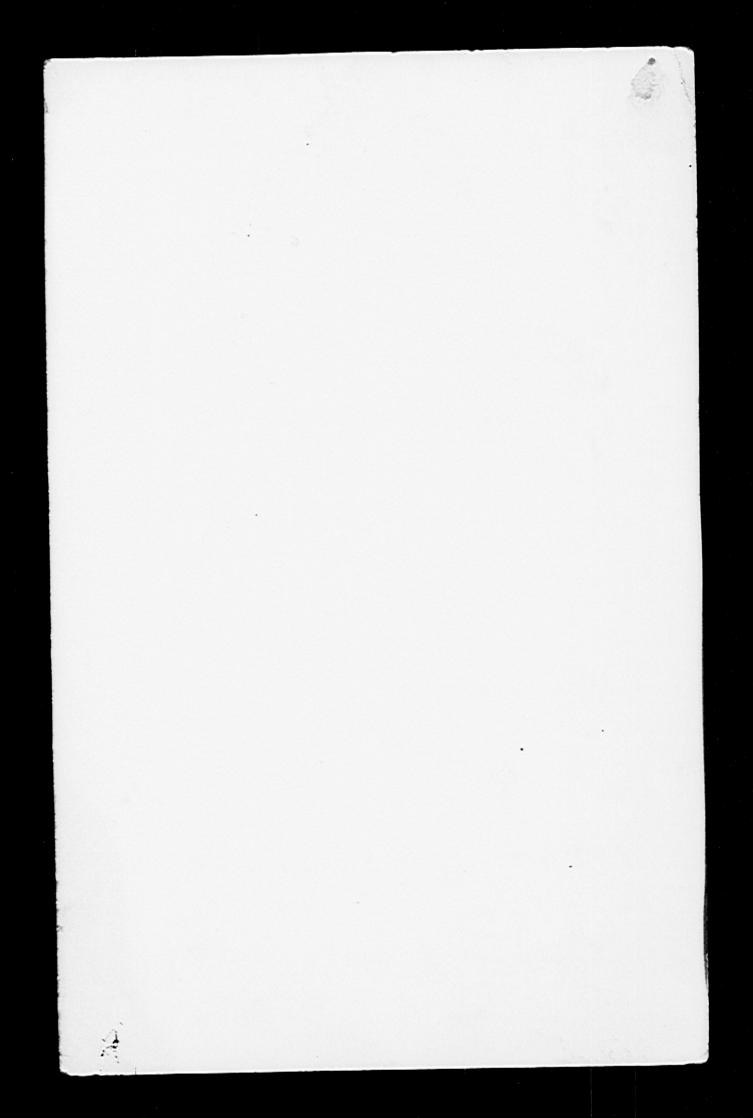
NATIONAL LABOR RELATIONS BOARD,
Respondent.

On Petition to Review an Order of the National Labor Relations Board.

United States Court of Appeals for the District of Columbia Circuit

FILED MAY 8 1963

Mathan Daulson



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IN THE

United States Court of Appeals

District of Columbia Circuit

No. 17,193

INGRAM BARGE COMPANY,
Petitioner,

versus

NATIONAL LABOR RELATIONS BOARD, Respondent.

On Petition to Review an Order of the National Labor Relations Board.

JOINT APPENDIX

COMPLAINT AND ORDER CONSOLIDATING CASES AND NOTICE OF HEARING

UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD THIRTEENTH REGION

LOCAL 28, INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, INC., AFL-CIO; ASSOCIATED MARITIME WORKERS, LOCAL NO. 3, INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, INC., AFL-CIO; and HARRY RUTAN, their Agent,

Respondents,

and Case No. 13-CC-182

THE TEXAS COMPANY,
Charging Party,

LOCAL 28, INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, INC., AFL-CIO; ASSOCIATED MARITIME WORKERS, LOCAL NO. 3, INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, INC., AFL-CIO; and HARRY RUTAN, their Agent,

Respondents,

and Case No. 13-CC-184

INGRAM BARGE COMPANY,
Charging Party,

LOCAL 28, INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, INC., AFL-CIO; ASSOCIATED MARITIME WORKERS, LOCAL NO. 3, INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, INC., AFL-CIO; and HARRY RUTAN, their Agent,

Respondents,

and Case No. 13-CB-679

INGRAM BARGE COMPANY,
Charging Party.

ORDER CONSOLIDATING CASES

WHEREAS, pursuant to Section 10 (b) of the National Labor Relations Act, as amended, 61 Stat. 136, a charge and an amended charge having been filed by The Texas Company in Case No. 13-CC-182, and a charge having been filed by Ingram Barge Company in Case No. 13-CC-184, and a charge and an amended charge having been filed by Ingram Barge Company in Case No. 13-CB-679, copies of each of which having been duly served upon each of the above-named Respondents, and the undersigned having duly considered the matter and deeming it necessary in order to effectuate the purposes of the Act, and to avoid unnecessary costs or delay,

IT IS HEREBY ORDERED pursuant to Section 102.33 of the Board's Rules and Regulations, Series 7, as amended, that these cases be, and they hereby are consolidated for the purpose of Complaint and Hearing.

CONSOLIDATED COMPLAINT AND NOTICE OF CONSOLIDATED HEARING

It having been charged by The Texas Company (herein called Texas) in Case No. 13-CC-182, and by Ingram Barge Company (herein called Ingram) in Case Nos. 13-CC-184 and 13-CB-679 that Local 28, International Organization of Masters, Mates and Pilots, Inc., AFL-CIO, Associated Maritime Workers, Local No. 3, International Organization of Masters, Mates and Pilots, Inc, AFL-CIO, and Harry Rutan, their Agent (herein called Respondent Local 28, Respondent Local 3, and Respondent Harry Rutan, respectively, or collectively called Respondents) have engaged in and are engaging in unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 61 Stat. 136 (herein called the Act), the General Counsel of the National Labor Relations Board (herein called the Board), on behalf of the Board, by the undersigned Regional Director, issues this Consolidated Complaint and Notice of Consolidated Hearing pursuant to Section 10 (b) of the Act and Section 102.15 of the Board's Rules and Regulations, Series 7, as amended.

I

(a) The charge in Case No. 13-CC-182 was filed by Texas on July 22, 1958, and copies thereof were served by registered mail upon the Respondents, Local 3 and Harry Rutan, on or about July 24, 1958. The first amended charge in Case No. 13-CC-182 was filed by Texas on August 13, 1958, and copies thereof were served by registered mail upon the Respondents on or about August 15, 1958.

- (b) The charge in Case No. 13-CC-184 was filed by Ingram on September 29, 1958, and copies thereof were served by registered mail upon the Respondents on or about September 30, 1958.
- (c) The charge in Case No. 13-CB-679 was filed by Ingram on July 25, 1958, and copies thereof were served by registered mail upon the Respondents, Local 3 and Harry Rutan, on or about July 30, 1958. The first amended charge in Case No. 13-CB-679 was filed by Ingram on August 27, 1958, and copies thereof were served by registered mail upon the Respondents on or about August 29, 1958.

II

- (a) The Texas Company, a Delaware corporation, is engaged in the business of producing, refining, storing, selling and distributing petroleum products throughout the United States and a number of foreign countries. During the past year, Texas in the course and conduct of its business sold petroleum products valued in excess of \$100,000,000, at least \$1,000,000 of which was shipped from its refinery at Lockport, Illinois, to points located outside the State of Illinois.
- (b) Ingram Barge Company is engaged in the waterborne transportation of goods, principally petroleum products, along the inland waterways of the United States. During the past year Ingram's revenue derived from such transportation exceeded \$500,000.

III

Texas and Ingram are, and at all times material herein have been, engaged in commerce and their operations affect and have affected commerce within the meaning of Section 2 (6) and (7) of the Act.

IV

- (a) Respondent Local 28 is, and at all times material herein has been an organization in which employees participate, and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and is, and at all times material herein has been, a labor organization within the meaning of Sections 2 (5) and 8 (b) of the Act.
- (b) Respondent Local 3 is, and at all times material herein has been, an organization in which employees participate, and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and is, and at all times material herein has been, a labor organization within the meaning of Sections 2 (5) and 8 (b) of the Act.
- (c) Respondent Harry Rutan at all times material herein has been Assistant Secretary-Business Agent of Respondent Local 28 and Secretary-Business Agent of Respondent Local 3.

(d) E. A. Adams is, and at all times material herein has been, Business Agent of Respondent Local 28.

v

At all times material herein Respondents Local 28, and Local have acted with respect to matters involved in concert, and as agents for each other.

VI

The Respondents by and through their officers, agents and representatives have restrained and coerced and are restraining and coercing employees in the exercise of their rights guaranteed in Section 7 of the Act by the following acts and conduct:

- (a) On or about July 10, 1958, and at various times thereafter, threatened employees with bodily harm in an effort to force them to support Respondents' strike and cease work for Ingram.
- (b) On or about July 10, 1958, and at various times thereafter inflicted bodily harm on employees in an effort to force them to support Respondents' strike and cease work for Ingram.
- (c) On or about July 13, 1958, and at various times thereafter threw rocks and stones at employees working on Ingram tow-boats and barges in an effort to force them to support Respondents' strike and cease work for Ingram.
 - (d) On or about July 24, 1958, in the presence of em-

ployees threatened Captain Perry Scott with physical harm if he did not support Respondents' strike and cease work for Ingram.

- (e) On or about July 24, 1958, in the presence of employees physically threw Captain Perry Scott into the Chicago Sanitary Ship Canal in an effort to force him to support Respondents' strike and cease work for Ingram.
- (f) On or about August 13, 1958, untied two Ingram barges and set said barges adrift on the Chicago Sanitary Ship Canal, thereby causing a menace to navigation and endangering the lives of employees in an effort to force them to support Respondents' strike and cease work for Ingram.

VII

Respondents since on or about July 20, 1958, have engaged in, or induced or encouraged the employees of Texas, and other employers, to engage in, a strike or concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials or commodities or to perform any services with an object of forcing or requiring Texas to cease using, handling, transporting, or otherwise to cease doing business with Ingram as follows:

(a) For some time prior to July 5, 1958, Respondent Local 28 has been the recognized collective bargaining representative of Ingram Company's licensed personnel, and Respondent Local 3 has been the recognized collective bargaining representative of Ingram's unlicensed personnel.

- (b) Since on or about July 5, 1958, Respondents Local 28 and Local 3 have been on strike against Ingram Company over contract terms.
- (c) At no time material herein have Respondents, or any of them, had any labor dispute with Texas.
- (d) On or about July 20, 1958, a tow-boat and three empty barges, all owned by Ingram, tied up at the Texas dock at Lockport, Illinois, where said barges were to be loaded by Texas employees with Texas products, and thereafter transported by Ingram to a Texas storage plant in Minneapolis, Minnesota.
- (e) Upon arrival of said tow-boat and barges at the Lockport dock of Texas, Respondents commenced picketing the Texas dock, at times with a large number of pickets, and by such picketing, and the throwing of stones over the barges and other acts and conduct, intimidated Texas employees not to perform work in connection with the loading of Texas products on Ingram barges.
- (f) On July 25, 1958, the Ingram tow-boat and all employees of Ingram were removed from Texas property, leaving the three barges tied up at the Texas dock to be loaded with Texas products by Texas employees.
- (g) Except for two short periods of not more than thirty minutes each, when it was necessary to temporarily move a barge from the Texas dock to permit the barge of some other company to load, no employee of Ingram has been on Texas property since July 25, 1958, while Respondents were engaged in picketing at the Texas dock.

- (h) Notwithstanding, Respondents since July 25, 1958, continued their picketing of the Texas docks and other conduct to prevent the Texas employees from loading the barges, until August 8, 1958.
- (i) As a consequence of the picketing and other conduct referred to in subparagraphs (e) and (h) above, the employees of Texas have refused to perform work for Texas in connection with the loading of Texas products on the Ingram barges.
- (j) On or about August 7, 1958, Respondents ceased picketing at the Texas dock in Lockport, notified Ingram that the strike against it was terminated, and requested that all strikers who had not been permanently replaced during the strike, be reinstated to their former positions.
- (k) On or about August 12, 1958, Ingram notified Respondents that all striking employees had been permanently replaced prior to the termination of the strike.
- (1) On or about August 12, 1958, a tow-boat and two barges owned by Ingram docked at a storage facility and dock operated by Texas at Mt. Vernon, Indiana.
- (m) On or about August 12, 1958, Respondents picketed the main entrance to the Texas property at Mt. Vernon, Indiana, which is some 900 feet from the Texas dock where the Ingram barges were tied up, and which point is not visible from the barges, and orally appealed to the employees of Texas, and of other employees, not to perform services for their respective employers at the Mt. Vernon, Indiana, premises of Texas. Respondents did not ask Texas

for permission to picket at the point where said barges were tied up.

(n) The pickets referred to in sub-paragraph (m) above, carried banners reading:

Lock out by Ingram Barge Co.
Ingram refuses to reinstate Masters, Mates &
Pilots
Please help us get our jobs back Local #28,

Masters, Mates & Pilots

- (o) Notwithstanding the picketing referred to in subparagraphs (m) and (n) above, the employees of Texas performed all duties required of them in connection with the loading of the Ingram barges tied up at the Mt. Vernon, Indiana, docks of Texas.
- (p) On or about August 12, 1958, Respondents terminated their picketing at the Mt. Vernon, Indiana, premises of Texas, stating in substance that the picketing at Mt. Vernon was doing them no good and that they were going to picket in the Pittsburgh area, where the barges were to be transported by Ingram, and where, Respondents stated, they could get more help.
- (q) At no time material during the picketing referred to in subparagraphs (m) and (n) above, were any employees of Ingram on the premises of Texas.
- (r) On or about August 13, 1958, an Ingram tow-boat arrived at Lockport, Illinois, with four barges to be loaded at the Texas dock. Two of the barges were tied up at the

Texas dock immediately, and the other two were tied up at about 1:00 P. M. that day.

- (s) After the last two Ingram barges were tied up at the Texas dock, as set forth in subparagraph (r) above, the Ingram tow-boat and all employees of Ingram were removed from Texas property, and at all times material remained at least five miles away from Texas property.
- (t) Notwithstanding the absence of Ingram employees at the Texas Lockport dock, Respondents picketed the Texas dock, immediately adjacent to the tied up Ingram barges, at times with as many as thirteen pickets, intended as a display of force and a threat of violence, with banners reading as set forth in subparagraph (n) above, and orally appealed to the employees of Texas and of other employers not to perform services for their respective employers.
- (u) As a consequence of the picketing and other acts and conduct of respondents set forth in subparagraph (t) above, the employees of Texas have refused and continued to refuse to perform work for Texas in connection with the loading of Texas products on the Ingram barges referred to in subparagraph (t) above.

VIII

By the acts described in Paragraph VI (a) through (f) above and by each of said acts, the Respondents and each of them, did restrain and coerce, and are restraining and coercing, employees in the exercise of their rights guaranteed in Section 7 of the Act, and did thereby, and are there-

by, engaging in unfair labor practices within the meaning of Section 8 (b) (1) (A) of the Act.

IX

By the acts described in Paragraphs VII (a) through (u) above, and by each of said acts, the Respondents, and each of them, have engaged in, and induced and encouraged the employees of Texas, and other employees, to engage in, strikes or concerted refusals in the course of their employment to use, process, transport or otherwise handle or work on goods, articles, materials or commodities or to perform services, with an object (1) to force or require Texas and other employers or persons to cease using, selling, handling or otherwise dealing in products transported by Ingram and to cease doing business with Ingram; and (2) to force or require customers and other employers or persons doing business with Texas to cease doing business with Texas. Respondents, and each of them, have thereby engaged in, and are engaging in unfair labor practices within the meaning of Section 8 (b) (4) (A) of the Act.

X

The activities of the Respondents described in Paragraphs VI and VII above, occurring in connection with the operations of Ingram and Texas, described in Paragraphs II (a) (b) and III above, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead to labor disputes, burdening and obstructing commerce and the free flow of commerce.

XI

The aforesaid acts of the Respondents, and each of them, constitute unfair labor practices affecting commerce within the meaning of Section 8 (b) (1) (A) and Section 8 (b) (4) (A) and Section 2 (6) and (7) of the Act.

PLEASE TAKE NOTICE that on the 4th day of February, 1959, at 10:00 A. M., in Room 1327, Midland Building, 176 West Adams Street, Chicago, Illinois, a consolidated hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the above Consolidated Complaint, at which time and place you will have the right to appear in person or otherwise and give testimony.

You are further notified that pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations the Respondents shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an Answer to said Consolidated Complaint within ten (10) days from the service thereof and that unless they do so all the allegations in the Consolidated Complaint shall be deemed to be admitted to be true and will be so found by the Board.

WHEREFORE, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Regional Director for the Thirteenth Region, on this 8th day of January, 1959, issues this Consolidated Complaint and Notice of Consolidated Hearing against Local 28, International Organization of Masters, Mates and Pilots, Inc., AFL-CIO,

Associated Maritime Workers, Local No. 3, International Organization of Masters, Mates and Pilots, Inc., AFL-CIO, and Harry Rutan, their Agent, the Respondents herein.

ROSS M. MADDEN
Ross M. Madden,
Regional Director
Thirteenth Region
National Labor Relations Board
176 West Adams Street
Chicago, Illinois

ORAL ANSWER TO COMPLAINT

Answering the Complaint herein, is the oral answer stated by Mr. Ratner at the hearing:

The allegations of Paragraph II(a) and (b) are admitted.

Paragraph III is admitted.

Paragraph IV(a) is denied; (b) is admitted; (c) is as pleaded is denied; (e) is admitted.

TRIAL EXAMINER:

There is no (e).

MR. RATNER:

(d) — I am sorry.

MR. NACHMAN:

What about (d)?

MR. RATNER:

(c) is denied and (d) is admitted.

MR. NACHMAN:

You said as to (c) denied as pleaded.

TRIAL EXAMINER:

What about (d)?

MR. RATNER:

(d) is admitted.

V is denied. VI denied, from (a) to (z).

TRIAL EXAMINER:

What do you mean by (a) to (z)?

MR. RATNER:

He wanted to know whether all of it was denied. Yes, it is denied, subparagraphs (a) through (f).

MR. CARTER:

You followed my suggestion pretty good.

MR. RATNER:

No, not so good. You have got some admissions with respect to establishing commerce data.

Paragraph VII is denied. Subparagraph (a) -

TRIAL EXAMINER:

Hadn't you already stated that before?

MR RATNER:

No, I denied VI, I thought.

TRIAL EXAMINER:

And you also deny VII.

MR. RATNER:

Deny VII.

TRIAL EXAMINER:

In toto?

MR. RATNER:

In toto.

We deny VIII, deny IX, deny X, and deny XI and, more specifically, answer the allegations of this complaint, we incorporate herein by reference and rely and stand upon the supplemental findings of fact and conclusions of law made by the Honorable J. Sam Perry, United States District Judge, for Northern District in Ross M. Madden vs. International Organization of Masters, Mates and Pilots, etc., in the United States District Court for the Northern District of Illinois, Eastern Division in Civil No. 58 C 1512, reported in 166 F. Supp. 862-864, entered by Judge Perry on October 7, 1958.

Wherefore, having completely answered the allegations of the complaint, the Respondents move that it be dismissed.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

Statement of the Case

Upon the filing of charges by the Charging Parties named in the above-captioned cases complaints were issued by the Regional Directors for the Thirteenth and Fourteenth Regions of the National Labor Relations Board in behalf of the General Counsel of the Board. Thereafter the General Counsel issued his Order, dated January 21, 1959, consolidating these complaints for hearing. A hearing was held before the undersigned Trial Examiner in several cities on various dates between February 24 and October 26, 1959. Briefs were received on June 21, 1960.

Upon the entire record in this case and from my observation of the witnesses, I make the following:

Findings of Fact

I. Commerce facts

The following commerce facts are alleged by the complaint and admitted by the Respondents' answer:

The Texas Company, herein called Texas, is a Delaware corporation engaged in the production, refining and distribution of petroleum products throughout the United States and foreign countries. In the year preceding issuance of the complaint Texas sold petroleum products valued in excess of \$100,000,000 of which at least \$1,000,000 worth was

shipped from its refinery at Lockport, Illinois, to points outside the State of Illinois.

Ingram Barge Company, herein called Ingram, is a business enterprise which engages in the waterborne transportation of goods along the inland waterways of the United States, and in the course of its operations transports such goods between several States. During the year preceding issuance of the complaint Ingram derived revenue from these operations in excess of \$500,000.

Commercial Barge Line is also a business enterprise which engages in the waterborne transportation of goods on the Mississippi River, and in the course thereof transports these goods between States. Its revenues from such operations in the year before issuance of the complaint exceeded \$100,000.

Globe Fuel Products, Inc., is a business enterprise which stores, sells, and distributes petroleum products in the Chicago, Illinois, area. In the year preceding issuance of the complaint it purchased petroleum products valued in excess of \$1,000,000 which were shipped to its Chicago premises from points outside the State of Illinois.

From the foregoing I find that all the business enterprises whose operations have been described are engaged in interstate commerce and that the Board's assertion of its jurisdiction over their operations will effectuate the purposes of the Act.

II. The alleged labor organization involved

Associated Maritime Workers, Local No. 3, International Organization of Masters, Mates, and Pilots, Inc., AFL-CIO, herein called Local 3, is concededly a labor organization admitting to membership employees of Ingram and other employers.

Local 28, International Organization of Masters, Mates and Pilots, Inc., AFL-CIO, herein called Local 28, is alleged by the complaint to be a labor organization within the meaning of Section 2(5) and (8) (b) of the Act. The Respondents deny this allegation. These opposing views are resolved, *infra*.

III. The unfair labor practices

General Contentions

All the alleged unlawful conduct ascribed to the Respondents stems from a dispute concerning wages and other employment terms by Ingram with Locals 3 and 28. In the course of this dispute Local 3 resorted to a strike which began on July 5, 1958, and officially terminated on August 7, 1958. The General Counsel contends that during this strike and thereafter until August 13, 1960, Local 3 and Local 28 and their agent Harry Rutan committed various acts of violence to person and property in violation of Section 8(b) (1) (A) of the Act, and also engaged in secondary boycott action in violation of Section 8(b) (4) (A) of the Act. This conduct is encompassed by the allegations of that portion of the consolidated complaint referred to herein as the Thirteenth Region complaint and designated by

Cases Nos. 13-CC-182, 184, and 13-CB-679. That part of the consolidated complaint referred to as the Fourteenth Region complaint and designated by Cases Nos. 14-CC-125, 126, and 127 alleges that as an outgrowth of the July 5, 1960, strike against Ingram, Local 28 and its agents E. A. Adams and Harry Rutan engaged during November 1960 in various acts of secondary boycott in violation of Section 8(b) (4) (A) of the Act.

The Respondents deny generally all the complaint allegations against them. Moreover, the Respondents defend as to Local 28 on the ground that it is not a labor organization within the Act's meaning and consequently that no finding that it had violated the Section 8(b) provisions of the Act is permissible. The General Counsel maintains throughout that Local 28 is a labor organization. The General Counsel further asserts that whether Local 28 is a labor organization is immaterial to a finding that it was a statutory violator with respect to the conduct alleged in the Thirteenth Region complaint for, as to such conduct, the General Counsel maintains that Local 28 by joint or concerted action with Local 3, which concededly is a labor organization, became statutorily liable as Local 3's agent. The General Counsel conceded that the Fourteenth Region complaint must fall if it is not established that Local 28 is a labor organization. The Respondents deny that Local 28 ever engaged in any joint or concerted action with Local 3 for which it should be held responsible as an agent.

The Economic Dispute Between Ingram and Locals 3 and 28

In the operation of its waterborne transportation busi-

ness Ingram maintains a fleet of tow boats and barges. Generally, these boats are manned by crews consisting of a master, pilot, mates, tankermen, deckhands, cooks, and engineroom personnel. Local 3 has had contractual relations with Ingram as the exclusive representative of all its tankermen, deckhands, cooks, and cook helpers. The last signed contract between Ingram and Local 3 ran from May 1, 1957, to May 1, 1958. Local 28 represented Ingram's masters, pilots and mates. Its last signed contract with Ingram was for the term of 1 year from March 16, 1956. Engineroom personnel on Ingram's boats have been represented by Marine Engineers Beneficial Association (MEBA).

Just before the March 16, 1957, expiration of the Local 28 contract with Ingram, the parties met to negotiate a new contract. Among the various changes then agreed upon was a provision to grant the covered masters, mates, and pilots 1 day off with pay for each day worked. The expiring contract granted three-quarters of a day off for each day worked. The new provision was to be applied 6 months after the new contract became effective. Although the agreements negotiated by Local 28 and Ingram were never signed by the parties, Ingram instituted the wage and other changes which had been negotiated, including the day off for each day worked provision which became effective on September 16, 1957. The Local 3 contract with Ingram effective from May 1, 1957, to May 1, 1958, also provided that beginning November 1, 1957, the covered employees should receive 1 day off with pay for each day worked.

Negotiations by Local 3 with Ingram looking toward a new contract started in April 1958. In May 1958 Ingram proposed to Local 3 various changes in the expiring contract including a reduction in the day off with pay to threequarters of a day off with pay for each day worked. This was in lieu of a cut in the wage scale. At the same time Ingram forwarded an identical proposal to Local 28 and to MEBA, proposing further that representatives of Local 3 and 28 and MEBA meet with Ingram concerning this matter. Ingram's efforts to secure acceptance by these parties of the three-quarter day proposal were unavailing. On June 26, 1958, Ingram notified its boat personnel of its decision to make the three-quarter day cutback, and on July 1, 1958, made this cutback effective.

The Strike Against Ingram

In June 1958, before Ingram instituted the three-quarter day cutback, Local 3 polled its Ingram members who voted to strike rather than to accept the proposed cutback. On July 5, following Ingram's July 1 action, Local 3 called a strike against Ingram and notified its members employed by Ingram of this action. Its members who were at the time aboard Ingram boats enroute on the rivers received radio messages and either on their own initiative or at the behest of Ingram officials who had learned of the strike got off the boats. In these circumstances the masters of three boats, the Arthur J. Dyer, the Hortense B. Ingram, and the Nelson Broadfoot, tied up at the nearest convenient locations on the rivers where they were then situated. The masters, mates, pilots, and engineer personnel aboard these boats were advised by Ingram to remain aboard and did so as security crews. Meanwhile Ingram secured replacements for the striking Local 3 members and brought them to the tied up boats. Upon refusal by the masters, mates, pilots, and engineers to operate the boats with "scab" replacements for the strikers, Ingram secured replacements for them also and proceeded to operate its boats with entirely new crews composed of persons without Local 3 or 28 affiliations.

From the start of the strike until its termination Local 3 established picket lines at various locations and engaged in various strike actions which are hereinafter described.

Local 3 maintained its strike against Ingram until August 7, 1958, when by letter of that date it notified Ingram that the strike had been terminated and the pickets established during the strike had been withdrawn. In the same letter request was made for reinstatement strikers who had not been permanently replaced with further request for employment of the remaining strikers on a seniority basis as job openings occur. By letter to its striking members dated August 8, 1958, Local 3 reported the substance of the August 7, 1958, letter to Ingram ending the strike.

Upon learning the termination by Local 3 of its strike, Local 28 requested Ingram to notify it of the time and place where it desired its members, the masters, mates, and pilots, to return to work. Ingram responded by telegram dated August 8 that it regarded the Local 28 communication as a termination of its strike and an unconditional offer to return to work. It added, however, that it would only place on a preferential hiring list those masters, mates, and pilots who had been replaced except those who had misconducted themselves during the strike.

Local 28 treated Ingram's August 8 telegram as a lockout of its members and decided to take economic action to force Ingram to restore them to employment. On various dates and places thereafter Local 28 by picketing and other acts brought pressure against Ingram to secure that object. This conduct will be referred to hereinafter.

Incidents Occurring Between the Start of the Local 3 Strike on July 5 and its Termination on August 7, 1958

> a. The assault on the Arthur J. Dyer

Following receipt of a radio message announcing the Local 3 strike, the master of the Arthur J. Dyer tied up his boat on July 6, 1958, on the bank of the Ohio River near Henderson, Kentucky, where the striking Local 3 crew members got off. The officers (the term "officers" is here used as a convenient collective reference to the master, pilot, mate, and engineers) remained on board to maintain security. While the Dyer was tied up from July 6 to July 10 a group picketed on shore. Identified among these picketers were Ingram employees Horace A. Spees, Larry Griffin, and Dexter Howell. Spees and Griffin were respectively employed as cook's helper and deckhand and were members of Local 3. Howell was a mate and a member of Local 28. Signs displayed by the pickets declared that Local 3 was striking Ingram.

On July 10 Ingram's port captain, Rubin N. Cioll, arrived with replacements for the entire crew. As the replacements boarded the boat the officers who had remained on board for security debarked and headed for shore. Thereupon the Dyer was barraged by marbles fired from sling-

shots by some of the pickets who shouted to the replacements "get off there you scabby bastard." To avoid injury to the crew from the marble missiles Cioll ordered that the Dyer be backed from shore without first untying the mooring ropes and in the process caused them to be broken. The Dyer and its four barge tow then moved downstream. R. C. Dean, a replacement deckhand on the Dyer, credibly testified that after the boat pulled away, he noticed two men on the barge who were not part of the crew. Dean had just stepped from the boat to one of the barges when he noticed these men running towards him from the opposite end of the barge, each with a stick in his hand. They pursued him with their sticks, cursing and calling out "you scab on me you son-of-a-bitch." Dean ran to the engineroom for safety. Joseph F. Cobb, the master of the replacement crew, credibly testified that after the Dyer had sailed about 2 miles two men got out from a motor boat and boarded the barges. One of them, with a 3-feet long piece of drift wood in hand, approached the pilot house where Cobb was on duty. As he mounted the steps leading to the pilot house Cobb urged him to leave before there was more trouble. The invader called Cobb a "non-union son-of-a-bitch," whereupon Cobb ordered him off the boat. Instead he started into the pilot house but was beaten off by Cobb who used the metal steering lever as a weapon. Although testimony by Cobb and Cioll indicates that the former's assailant was the aforementioned Dexter Howell, their testimony does not suffice to establish such fact because Cioll's knowledge as to Howell's identity is based upon hearsay information derived by him from certain unnamed persons, and Cobb admittedly could not from his own knowledge identify Howell. I am, however, satisfied from the testimony of Respondent's witnesses Mummel and McReynolds, whose ability to identify Howell is not challenged, that Howell and another person, Joe Wheeler, were the two invaders of the barges.

During times relevant to these proceedings Harry Rutan was officially the secretary-treasurer and business agent of Local 3. He was also employed during these times as assistant to E. A. Adams, the secretary and business agent of Local 28. There is no direct evidence to prove Rutan's presence when the Dyer was assailed by marbles and when Dexter Howell and his companion boarded the Dyer and its barges. Alex Mummel, the cook on the Dyer who had remained on board with the officers for security and who got off with them on July 10, testified that during the marble shooting incident Rutan was not present. Mate George E. McReynolds testified that as he left the Dyer on July 10, Rutan was not in sight. Cook's helper Horace A. Spees, who admittedly was one of the sling shooting pickets, also testified that Rutan was not present when the Dyer departed on July 10. These witnesses, however, acknowledged that Rutan had been present at the scene of the picketing before July 10, and that he was at a hotel in Henderson, Kentucky, that night. It should be noted from Spees' testimony concerning the dispersal of the pickets during the marble shooting episode that some were in the open where they could have been seen by him, and others were in the heavy brush nearby where they could not be seen. His failure and that of others to see Rutan at the time, assuming the truth of their testimony, therefore does not necessarily mean that Rutan was not present. Conceivably he was present but obscured by brush. This, however, may only be surmised. Charles R. Hutchinson, an Ingram master on the vessel E. B. Ingram which had been idled on July 6 by the strike at Paducah, Kentucky, testified that while he

had remained on the E. B. Ingram as part of the security crew until relieved, Rutan, whom he had not previously known, was pointed out and named by the crew members while he circled the E. B. Ingram in a motor boat and while he was with the pickets on shore. After he had been relieved Hutchinson went to his home and from there, on an unspecified day in July, traveled by automobile with two other Ingram masters to "see the boys on the Dyer." There he saw the person who had been pointed out to him as Rutan distribute slingshots and marbles to the pickets including Dexter Howell. I do not rely on Hutchinson's testimony as proof that the person who had been pointed out to him as Rutan by unnamed informants was in fact Rutan. Without other foundation to establish Hutchinson's ability to identify Rutan, I reject his identification of Rutan as the distributor of the slingshots and marbles as based entirely on incompetent hearsay.

b. The stoning of the E. B. Ingram

On about July 16, 1958, the vessel E. B. Ingram was proceeding on the Chicago Sanitary Canal with its three barge tow towards Chicago. During the early part of the afternoon it came to a location referred to as the Romeo Bridge. According to the credited testimony of George D. Hutcherson, the Ingram personnel manager and purchasing agent who had been on board, as the E. B. Ingram came near the bridge a group of men on each bank barraged the vessel with rocks, some as large as grape fruits. One rock smashed the window of the pilot house. Others knocked paint from the vessel. Hutcherson, who knew Rutan from a previous meeting with him, identified him as one of the rock throwers. When the E. B. Ingram later arrived at Lemont, Illi-

nois, arrangements were made to transfer the barges to another shipping company. Hutcherson conferred with Rutan and the owner of this other company who stated to Rutan that he was in trouble because of the rock throwing. Rutan did not comment. The master of the E. B. Ingram at the time of the Romeo Bridge incident was Perry H. Scott who had observed a person jump from behind the bushes on shore during the stoning of the vessel. This man was later identified for him as Rutan by Hutcherson at the injunction proceeding preliminary to this hearing at the Federal District Court in Chicago where Rutan was present.

c. The Hortense B. Ingram episode

Upon learning of the Local 3 strike, the master of the Hortense B. Ingram on July 6 tied up the vessel at Clarksville, Missouri, on the Mississippi River. The vessel was moored there until July 21, 1958, with only a security crew of officers on board including the master, James W. Coats, First Mate Wayne Johnson, the second mate, and the two engineers. On July 21 Cioll arrived with a full replacement crew and the security officers thereupon debarked. As the replacement crew was being transported to the Hortense B. Ingram in another boat, the aforementioned Wayne Johnson and three other persons, of whom one was the George E. McReynolds previously mentioned in connection with the incidents involving the vessel Arthur J. Dyer, approached in a fast moving motor launch. The launch was maneuvered about the boat carrying the replacement crew and at one point sped dangerously between the boat and the Hortense B. Ingram. When the replacement crew finally boarded the Hortense B. Ingram, Johnson exclaimed "You

son-of-a-bitches won't live to take that boat down the river, and if you do, we'll have a picket line at Lockport (Illinois) waiting for you." The foregoing account is based on the credited testimony of Cioll and Cobb.

d. The stoning of the barges and picketing at Lockport

At 5 a. m., July 20, 1958, Captain Perry Scott brought the E. B. Ingram and its tow of three empty barges to the Texas dock on the Chicago Sanitary Canal at Lockport, Illinois. These barges were to be loaded from the dock with Texas petroleum products for transportation by Ingram to another destination. After the barges were docked and tied up the E. B. Ingram with its entire crew on board moved up stream about 300 feet from the barges and was tied up there. On July 24, 1958, the E. B. Ingram, still with its entire crew on board, was moved to the other side of the canal about 300 to 400 feet down stream from the Texas dock. At this point the canal is about 300-feet wide.1 Except for one or more occasions when the E. B. Ingram recrossed the canal briefly to put out some lights on the Texas dock and to renew the batteries for these lights, the vessel remained tied to the wall of the canal opposite the Texas dock. It remained there until August 7 or 8 when the barges were loaded and

¹Frederick D. Davis, the superintendent of the Texas refinery at Lockport, testified that there was a bridge in the vicinity crossing the canal, and a road from the bridge over which he had seen automobiles travel to the "general vicinity" where the E. B. Ingram was moored. Texas owned no property on the side of the canal opposite its docks. Foreman David Blish also testified that there is a road leading to the point where the E. B. Ingram was tied up. He did not know whether this was a public road.

removed. As noted previously the Local 3 strike officially ended on August 7, 1958.

Kenneth E. Cochran, Ingram's traffic manager, credibly testified that he was at the Texas dock from the early morning of July 20 to July 30, 1958, and that he saw Rutan at the Texas dock on practically each day of this period. In the morning of July 20, Cochran directed two deckhands from the crew of the E. B. Ingram to go on the barges and to hook up certain hoses for pumping operations. Rutan and three persons who were with him thereupon threw stones at the deckhands. Cochran and the aforementioned Ingram personnel manager, George D. Hutcherson, thereupon sent the deckhands back to the E. B. Ingram and themselves hooked up the hoses to pump off ballast from the barges. Rutan and his three companions continued to throw stones. Most of the stones were thrown over the barges. None hit any person on the barges. Some landed on the barges.

Starting on July 20, and continuing to August 6, 1958, a picket line was maintained each day as close to the Ingram barges at the Texas dock as they were permitted to be. Rutan was with the pickets at various times during the picketing and was in charge of their activities. The number of pickets present at various times fluctuated from 2 to 10. Picket signs displayed by the pickets declared that Local 3 was on strike against Ingram. The signs had been obtained by Local 3 from Local 28 and had originally been printed for use by Local 28 which had kept them in reserve for use in some future possible strike. The "Local 28" designation printed on these signs had been lined out or otherwise obliterated, and the designation "Local 3" had been printed or written in its stead. This was true as to all but one sign

which was observed by Attorney George A. Bender who had been sent by Texas for whom he worked to the Lockport premises to deal with the problem presented by the strike. On his arrival at the dock on July 21, he noted that "Local 3" had not been substituted for "Local 28" on one sign. He asked the picket carrying this sign why his was different from the others. This picket failed to explain but another who was nearby volunteered that the failure to substitute "Local 3" for "Local 28" on the sign was a mistake. Thereafter all the picket signs observed by Bender designated Local 3 as the striking organization.

On July 21, three Texas employees, Ray F. Jackson, Leslie Gilbert, and Edward H. Rodeghegro were ordered by their superiors to load the Ingram barges with petroleum. This operation necessitated hooking hoses from the dock to valves on the barges and during the pumping operations to go aboard the barges to check gauges and to open and shut valves. Jackson and Gilbert told their foreman, Ed Rowley, from whom they received their orders, that they would not hook the hoses to the barges because they feared bodily harm. Jackson expressed fear that a rock might be thrown against a barge which could spark an explosion of the volatile gas fumes which it contained. He even feared that someone would shoot at him from the other side of the canal. Before the arrival of the barges on July 21, the city police had come to the dock and had inquired whether he had heard anything about "rock throwing." This inquiry by the police "in a way" had something to do with his fear about working on the barges. Gilbert had heard one picket say to another that "somebody might get hurt during the day while they were there." The remark was not made to him. He declared fear for his safety while the pickets were present. Rodegheghro also told his foreman he was afraid to load the barges. His fear was induced by the presence of five or six sign carrying pickets on the dock. He feared that in the dispute between Local 3 and Ingram that some act of violence by either side, such as the throwing of a rock or rifle fire, would cause an explosion on the barges which would injure him. Neither Jackson nor Rodegheghro ascribed any acts or words to the pickets directed to them.

David Blish, the Texas foreman in charge of its Lockport receiving, docking, and storage facilities, testified that he had assigned the aforementioned Texas employees to the Ingram barge loading operations on July 21. He related that in loading Ingram barges with petroleum, as distinguished from barges of other shippers, all the loading operations were not customarily performed by Texas employees. These operations required the performance of functions both on the dock and on the barges. As to functions on the barges, Ingram ordinarily supplied persons classified as tankermen for their performance. Texas personnel, including tankermen, connected the hoses from the dock to the barges and then signaled the Texas pumping station to start the machines which pumped the petroleum into the barges. As the petroleum flowed into the barges, Ingram tankermen on board performed the necessary function of adjusting valves regulating the amount of petroleum entering the several compartments to keep the barge level in the water as it was loaded. During loading the Texas tankermen boarded the Ingram barges hourly to make brief observations. Blish had been informed by the Texas Industrial Relations Department in advance of the arrival of the Ingram barges that no Ingram tankermen would be aboard them for loading operations. This was the first time he had ever received loading instructions from this department, and he was not told why the Ingram tankermen would not arrive with the barges. The duties assigned to the Texas employees which they refused to perform on July 21 included the performance of the operations customarily carried out by the Ingram tankermen.

Relevant to the identity of the principal for whom Rutan during the Lockport picketing was acting as agent the General Counsel adduced the following evidence:

During the afternoon of July 21, Attorney Bender advised Rutan that Texas had decided upon a course of action which might affect continuation of the picketing at the dock. Accordingly, Bender asked him whether he could decide whether the picketing should stop. Rutan replied he had no power to call off the picketing, and told Bender he must for this purpose contact Adams, the aforementioned secretary and business agent of Local 28. Bender asked Rutan to identify Adams and Rutan showed him a card bearing Adams' name. Rutan informed Bender that Adams' office was in St. Louis but that he could not then be reached there as he was in Washington or elsewhere on the east coast.

Robert L. Stoneham, the Texas superintendent of Industrial Relations at its Mount Vernon, Indiana, and Lawrenceville, Illinois, terminals, testified that in July 1958 he had met Rutan at the Mount Vernon premises. Testimony by E. F. Boyle, the Mount Vernon superintendent, established that the date of Stoneham's meeting with Rutan was July 12, 1958. Stoneham recalled that Rutan had presented his business card on which he is described as

"Asst. Sec'y-Business Agent" of Local 28 as well as "Sec'y-Business Agent" of Local 3. Rutan spoke to him of the troubles both Locals were having with Ingram and stated he represented both organizations.

e. The attack upon Captain Perry H. Scott

As related, Captain Scott was master of the E. B. Ingram when the vessel and its barges were berthed at or near the Texas dock at Lockport from July 20 to August 7, 1958. On July 24 Scott took a deckhand from the vessel to the bus station in the town of Lockport. As he was backing his automobile out of a service station another automobile pulled up with passengers whom he recognized as persons who in the preceding 4 days had picketed at the Texas dock. One of these persons was Charles W. Bonds an Ingram deckhand who was a member of Local 3. These persons, including Bonds, cursed him and called him "scab son-of-a-bitch." When Scott returned to the dock the road entering the Texas premises was blocked by an automobile driven by a woman whom he had several times before seen at the dock with Rutan and once carrying a picket sign in a speedboat which went up and down the canal at the time when the E. B. Ingram was attacked at the Romeo Bridge. As this woman's automobile stopped Scott's forward progress his automobile was blocked from the rear by the automobile from which he had been cursed in Lockport. Four or five persons were in this automobile. One big sized person in this group, who did most of the talking, conferred with the woman. Then he told Scott to discharge the men on the E. B. Ingram and that he himself should quit. Next Bonds told Scott to quit and warned that the "river was narrow going out and anything might happen to him." The big man and Bonds threatened to "beat the hell" out of Scott if he did not quit. The big one challenged Scott to a 3-minute fight and declared his assurance he would not need longer to accomplish his purpose. Bonds offered to substitute for the challenger because he was more nearly Scott's size, adding a plea for permission to "beat the hell" out of him. After more discussion and threats to Scott if he did not quit, his assailants finally decided to throw him into the canal. They methodically permitted him to remove his hat, coat, watch and billfold and to place them into his automobile. Then, despite Scott's protests that he could not swim, they dragged him to the edge of the canal and threw him into its filth (Chicago sewage). Scott swam to a so-called "butterfly dam" where 30 minutes later he was rescued by the E. B. Ingram.

After Scott boarded the E. B. Ingram, he pointed out to Personnel Manager Hutcherson who was on board with him certain persons on the dock. Among those who were identified by Hutcherson were the aforementioned Bonds, Wayne Johnson, Robert Honeycutt, and George McReynolds. Neither Scott's nor Hutcherson's testimony indicates that any of these persons, except Bonds, though observed with the pickets after the attack upon Scott, had participated in that action. I credit testimony by McReynolds that he arrived at the dock with Johnson and Honeycutt after Scott had been thrown into the canal. Testimony by Selby A. Murray, one of the Local 3 pickets, supports McReynolds' testimony.

Other Acts Alleged as Unlawful in the Thirteenth Region Complaint Committed After Termination by Local 3 on August 7, 1958, of its Strike Against Ingram

As explained, ante, the General Counsel argues that whether Local 28 is a labor organization is immaterial to a finding that it violated the Act by engaging in all the conduct alleged in the Thirteenth Region complaint. This argument is premised on the assertion that Local 28 acted in concert with Local 3 and would therefore be statutorily liable for all unlawful conduct committed by Local 3 as its agent. It has been noted that Local 3 terminated its strike against Ingram on August 7, 1958, by notification to Ingram and by the withdrawal of its pickets. The record fails to show that despite these actions Local 3 continued its strike against Ingram after August 7. There is, consequently, no support for a finding that Local 28 thereafter acted in concert with Local 3 in a common dispute with Ingram. A finding that Local 28 violated the Act by engaging in the post August 7 conduct alleged in the Thirteenth Region complaint must depend, as it does with respect to all allegations against Local 28 in the Fourteenth Region complaint, upon preliminary findings and a conclusion of law that it is a labor organization within the meaning of the Act and subject to the sanctions of the Act for its conduct as a labor organization. For this reason I have separated the post August 7 conduct alleged in the Thirteenth Region complaint from the conduct, already described, alleged by this same complaint to have been committed before then. Because of my findings and conclusions, detailed below, that Local 28 is not a labor organization, within the meaning of the Act, it is unnecessary to burden this report with an elaborate recital of the post August 7 conduct alleged in the Thirteenth Region complaint. In brief, these allegations involve picketing of the Texas dock at its Mount Vernon, Indiana, terminal and the Texas dock at Lockport, Illinois, and other acts of inducement of employees on August 13, 1958, allegedly in violation of Section 8(b) (4) (A) of the Act, and acts of violence incident to the Lockport picketing allegedly violative of Section 8(b) (1) (A) of the Act.

Unlawful Conduct Ascribed to Local 28 by the Fourteenth Region Complaint

The allegations of this complaint involve activities by Local 28 to compel Ingram to restore to employment those masters, mates, and pilots who Local 28 claimed were "locked out" by Ingram's refusal to permit their return to work following the termination of the Local 3 strike. The premises of other employers where Ingram vessels and barges arrived in the course of Ingram's business operations with these employers were picketed by Local 28 on three separate occasions. These activities occurred on November 4 and 5, and again between November 10 and 14, 1958, at Globe Fuel Products, Inc., in Chicago, on November 19, and 20, 1958, at the Texas terminal in St. Paul, Minnesota, and on November 18, 1958, at the Commercial Barge Line dock in St. Louis, Missouri. Because of the findings and conclusions hereinafter stated that Local 28 is not a labor organization within the meaning of the Act, I find it unnecessary in this report to detail the aforementioned conduct by Local 28 alleged by the General Counsel to have violated Section 8(b) (4) (A) of the Act.

> Findings Concerning the Thirteenth Region Complaint

a. Section 8(b) (1) (A) violations by Local 3

I have found that on July 16, 1958, Rutan and other un-

identified persons under his direction hurled rocks at the E. B. Ingram as it neared the Romeo Bridge on the Chicago Sanitary Canal and that some of these rocks found their mark with resultant damage to their target. I have also found that on July 20, 1958, Local 3 Business Agent Rutan personally participated with pickets in the stoning of Ingram barges and employees as well as Ingram's officials at the Texas dock at Lockport, Illinois. Such conduct was reasonably calculated to restrain and coerce Ingram employees in the exercise of their right not to join the strike by Local 3 against Ingram. These proven acts of violence are by themselves sufficient to charge Rutan and Local 3 on whose behalf he committed this conduct with statutory responsibility as violators of Section 8(b) (1) (A) of the Act and to support the order I shall recommend to require them to cease and desist from engaging in these or similar acts of employee restraint and coercion.

The record does not permit a finding that Rutan or any other official or agent in charge of picketing was present during the marble shooting attack on the Arthur J. Dyer, or the boarding of this vessel and its barges by Dexter Howell and Joe Wheeler. The same is true concerning the maneuvering by Wayne Johnson of his speed launch to impede the boarding of the Hortense B. Ingram by the replacement crew, and the threat of violence by Johnson to the crew after it had boarded the vessel. Nor does the record reveal the presence of Rutan or any other agent in charge of picketing at the Texas dock in Lockport, Illinois, when Captain Perry Scott was violently thrown into the Chicago Sanitary Canal. The Respondents argue that none of these acts may be charged to Local 3 absent a showing that they were committed in the presence of an agent who

was himself a participant therein or who authorized or ratified them. The General Counsel on the other hand maintains that Local 3's responsibility does not necessarily depend upon proof of the presence of Rutan or some other agent during the commission of the conduct in question; that a finding that Local 3 had violated Section 8(b) (1) (A) is warranted by regarding all the above-related coercive acts as a "pattern of conduct established, sponsored, and initiated by Rutan, the joint agent of Locals 3 and 28."

I am persuaded that the shooting of the marbles at the Arthur J. Dyer and the throwing of Captain Scott into the canal by Local 3 pickets is the responsibility of Rutan and his principal, Local 3. Even though it is not directly or circumstantially proved that Rutan was on the bank of the river when the Arthur J. Dyer was attacked, the record shows that he had been at the scene of picketing before the incident, and that he appeared that very night in Henderson and had conversations with persons who had witnessed the attack. It is extremely unlikely that Rutan had not by then learned of the violence of that afternoon committed by the Local 3 pickets, and I infer that he did know about it. The fact that within 6 days Rutan himself participated with his pickets in a rock barrage of the E. B. Ingram, and the absence of any showing that Rutan had repudiated the marble attack on the Arthur J. Dyer, convinces me that not only was there no repudiation but instead approval. The actions of Rutan himself as a rock thrower within the same week may reasonably be regarded as approval of the marble shooting by his pickets. The stoning of the Ingram barges and personnel at Lockport by Rutan and his pickets 4 days after the attack on the E. B. Ingram at the Romeo Bridge made doubly clear his approval of and adoption of the Local 3 pickets at Lockport had been sufficiently indoctrinated by Rutan's examples so that when they threatened Scott with violence if he did not discharge his crew and himself quit, and then threw him into a veritable cesspool while ignoring his professed inability to swim, they were merely carrying out the violent precepts in which they had been tutored by their leader and mentor. Of course, in these circumstances Rutan and his principal, Local 3, cannot disclaim responsibility for the actions of their pickets merely because Rutan's presence during their commission has not been established. See *Tungsten Mining Corporation*, 106 NLRB 903.

I find that the marble shooting by the pickets at the Arthur J. Dyer on July 10, the violent threats to Captain Scott and the throwing of him in the canal on July 24, 1958, also constitute restraint and coercion of employees in violation of Section 8(b) (1) (A). In finding that the conduct involving Captain Scott was unlawful I am mindful that he was a supervisor within the meaning of the Act, and that no nonstriking employees may have witnessed the violence against him at the dock. These circumstances, however, do not mitigate against a finding that employees were restrained or coerced in violation of Section 8(b) (1) (A). I am satisfied that the attack upon Scott at the dock was of such nature that employees were bound to learn about it. See W. T. Smith Lumber Company, 116 NLRB 507; enfd. 243 F. 2d 745 (C. A. 5).

I do not impute responsibility to Local 3 for the violent acts of Dexter Howell and Joe Wheeler in boarding the Arthur J. Dyer, and the violent conduct of Wayne Johnson,

George McReynolds and their unidentified companions in the speed boat who endangered the replacement crew attempting to board the Hortense B. Ingram, or for the threat of violence by Johnson in the course of this same incident. Howell, Johnson and McReynolds were members of Local 28 and not of Local 3. The affiliation of Wheeler and the other persons involved in these incidents with any organization is not established in the record. Local 3 may be held hable for the conduct of these persons provided it has been shown that they were its agents in the commission of their violent acts. See Sunset Line and Twine Company, 79 NLRB 1487 and Perry Norvell Company, 80 NLRB 225. It has not been proved that they had joined the ranks of the Local 3 pickets with the knowledge and approval of Rutan or some other responsible agent of Local 3. In fact, neither Rutan nor any other Local 3 agent directing the action of its pickets was shown to have been present during the incidents involving the Arthur J. Dyer and the Hortense B. Ingram. Were there proof that Local 3 had recruited these Local 28 members or other persons to join the ranks of its pickets I would unhesitatingly have found basis for Local 3 responsibility for their violence. Such proof is lacking. Adoption or ratification by Local 3 of their conduct during or after commission would also have provided basis for Local 3's responsibility. Evidence of such adoption or ratification is not present. Thus, absent proof of the required agency, adoption or ratification of the violent conduct by the foregoing perpetrators there is no legal basis for charging Rutan or Local 3 with responsibility for their conduct.

b. The alleged Section 8(t) (4) (A) violation by Local 3

The General Counsel contends that the picketing of the Texas dock at Lockport by Local 3 from July 20 to August 7, 1958, was violative of Section 8(b) (4) (A) of the Act, in that it occurred at the premises of a secondary or neutral employer with whom Local 3 had no dispute, and the object of the picketing was to induce and prevent Texas employees from performing their regular duties and thus to cause Texas to cease doing business with Ingram. The Respondents assert the legality of this picketing. They insist that it was intended only to affect the loading of Ingram's barges and to restrict the area of the dispute to Ingram. While the Respondents acknowledge that Texas employees were induced or encouraged to cease work, they declare such inducement and encouragement was for the exclusive purpose of having them cease "doing business with the primary employer (Ingram) only." They emphasize the fact that the picketing had the effect only of inducing the Texas employees to refrain from loading Ingram barges, and that it did not deter them from performing these operations on the barges of other companies at the struck premises during the picketing. The Respondents rely on the Board's Pure Oil Company decision, 84 NLRB 315, in support of their argument that the inducement of the Texas employees not to perform services was in effect a lawful appeal to them to respect Local 3's traditional primary strike action. Moreover, the Respondents maintain, Texas lost whatever immunity it might have had as a neutral employer when it directed its employees to perform work on the Ingram barges customarily performed by Ingram's employees. Thereupon, they say, Texas became Ingram's ally in the dispute with Local 3 and was deprived of statutory protection from involvement in that dispute by Local 3's inducement of its employees to cease performance of services.

The General Counsel's brief concedes that if Ingram employees had been present at the Texas dock Local 3 would have been entitled to picket at this location provided it did so in accordance with the standards established by the Board in Moore Drydock, 92 NLRB 547. At the same time, the General Counsel argues that the Texas dock was not the site of the dispute after the Ingram tow boat and its entire crew had berthed the barges at the dock and had sailed to a remote position, and would equate the situation created by the absence of the Ingram employees from the Texas dock with the factual conditions which obtained in the Incorporated Oil Company case, 116 NLRB 1844, where the Board held that the total absence of the primary employers' employees from the vicinity of the claimed common situs rendered inapposite legal precedents relating to cases involving common situs picketing. As related above, the Ingram tow boat, the E. B. Ingram, had arrived with its three empty barges on July 20 and, after securing them to the Texas dock, had in the ensuing 4 days been berthed about 300 feet upstream from the barges. On July 24 the E. B. Ingram with its entire crew aboard moved to the other side of the canal opposite the Texas dock about 300 to 400 feet downstream and remained there until August 7 except for brief intervals when the boat came back to the Texas dock to put out lights on the barges. The canal at the point where the Texas dock is located is about 300 feet wide. The General Counsel reasons that on and after July 24 the situs of the dispute became the place opposite the Texas dock where the E. B. Ingram and its crew were located. Essentially the General Counsel's position is that the Moore Drydock conditions that the picketing be strictly limited to times when the situs of the dispute is located on the secondary employer's premises, that it be limited to places reasonably close to the location of the situs, and that at the time of the picketing the primary employer must be engaged in its normal business at the situs, were not met when after July 24, at the latest, Local 3 picketed at the Texas dock and not on the other side of the canal or by boat in the canal near the E. B. Ingram and its crew.

The General Counsel further disagrees with the Respondents' contention that Texas lost its neutrality and became Ingram's ally by directing its employees to board Ingram's barges during loading operations to perform the customary functions of Ingram's tankermen. The General Counsel argues that no alliance was thereby established because the control of valves aboard the barges during loading was work essential to the continuation of Texas' business, and that when Texas directed its employees to perform duties on the barges it was only devising "other methods" of a sort mentioned by the Board in its United Marine Division decision, 107 NLRB 686, 707-8, to which a secondary employer faced with a strike against his supplier of services may resort without forfeiting its status as a neutral. The General Counsel's brief further states that the basic function of Ingram was merely to tow the barges to the Texas dock, whereas the loading of the barges was the exclusive responsibility of Texas. Granting that Ingram employees before the strike assisted in loading the barges, the General Counsel characterizes this activity as a mere addition to their prime function of transporting the barges to their various destinations. In these circumstances

the General Counsel would not regard the take over by Texas of all the loading operations including the work ordinarily done by the Ingram tankermen as a transfer or farming out by Ingram of struck work to Texas so as to constitute it an ally.

I find that the picketing at the Texas dock between July 20 and 24 before the Ingram towboat and all its personnel departed from the dock area was lawfully conducted in conformity with Moore Drydock requirements. The General Counsel conceded at the hearing that the pickets were stationed as near the barges as they were permitted to be. From the description of the dock area in the record it appears that the picketing from this location was also as close as possible to the towboat and the personnel aboard while it was tied up about 300 feet upstream from the barges at the Texas dock. In these circumstances, it cannot be disputed that Ingram employees were present at the Texas dock and that picketing at this situs was permissible if it conformed to the Moore Drydock conditions. With the towboat and its personnel, as well as the barges, at the dock, the Texas premises were clearly harboring the situs of the dispute between Ingram and Local 3. The picketing while this condition prevailed was therefore (1) strictly limited to times when the situs of the dispute was located on the secondary employers' premises; (2) at the time of the picketing the primary employer, Ingram, was engaged in its normal business at the situs; (3) the picketing was limited to places reasonably close to the location of the situs. As to the fourth Moore Drydock requirement, that the picketing disclose clearly that the dispute was with Ingram, the legend on the picket signs displayed during the picketing

ON STRIKE AGAINST INGRAM BARGE LINE, MASTERS, MATES AND PILOTS, AMW LOCAL 3, AFL-CIO

only. Furthermore, the appeals to Texas employees were limited to withholding of services to be performed by them in connection with Ingram operations only, and not to refuse to do work incident to Texas' business with other employers at the dock. The General Counsel's brief itself asserts that the object of the picketing as expressly represented by Rutan was to induce Texas employees not to perform work incident to the loading or unloading of Ingram barges. The fourth requirement was, therefore, also met. The July 20 to 24 picketing having thus conformed to all the Moore Drydock requirements, I find no violation of Section 8 (b) (4) (A) by Local 3 in the course of such picketing.

The removal of the towboat and crew from the Texas dock after July 24 did not substantially alter the situation prevailing before then. This was merely a shadow departure of Ingram's personnel which did not affect the fundamental character of the circumstances which satisfy me that Texas continued to harbor the situs of the dispute. While the Ingram tow and employees were on the side of the canal opposite the Texas dock, the Ingram barges still remained at the dock to be loaded. In the course of ordinary operations no loading of these barges would have occurred without the presence of Ingram employees on them to regulate the flow of petroleum. Had the pickets departed it was to have been expected by them that Ingram's employees in accordance with custom would have returned to work on the barges during loading. Ingram's true situs was therefore

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ON STRIKE AGAINST INGRAM BARGE LINE, MASTERS, MATES AND PILOTS, AMW LOCAL 3, AFL-CIO

is an unequivocal declaration of a dispute with Ingram only. Furthermore, the appeals to Texas employees were limited to withholding of services to be performed by them in connection with Ingram operations only, and not to refuse to do work incident to Texas' business with other employers at the dock. The General Counsel's brief itself asserts that the object of the picketing as expressly represented by Rutan was to induce Texas employees not to perform work incident to the loading or unloading of Ingram barges. The fourth requirement was, therefore, also met. The July 20 to 24 picketing having thus conformed to all the Moore Drydock requirements, I find no violation of Section 8 (b) (4) (A) by Local 3 in the course of such picketing.

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not its towboat, but the barges on whch Ingram's employees were to perform the only work to be done incidental to the presence at or near the Texas dock of the barges or the towboat with its crew. In this respect this case differs factually from Incorporated Oil, supra, where the employees of the secondary employer were induced to withhold construction services which were wholly unrelated to the work of the absent employees of the primary employer which consisted of the operation of an automobile service station. In this circumstance the Board logically regarded the picketing of the offending union during the total absence of the primary employer's employees not as inducement of these employees to refuse to work, but as a mere "provocation of a strike by the employees of [the secondary employer], with which this Union had no quarrel whatsoever." In these circumstances, the Board said, "legal precedent relating to common situs cases is inapposite." In the instant case, the picketing by Local 3 was directed only against work in which Ingram and Texas employees ordinarily joined. It was, moreover, addressed to the work of Ingram employees which Texas employees had been directed to perform. Picketing to induce Texas employees not to perform work which, pursuant to the direction of their superiors, involved assumption of duties which would have been performed by absent Ingram employees may not be equated with mere provocation of a strike by Texas employees to compel a cessation of business between Texas and Ingram. I would consequently regard the common situs legal precedents as applicable to this case, and, because the Moore Drydock requirements were met after July 24, as before, do not find that the picketing of the Texas dock by Local 3 was violative of Section 8 (b) (4) (A).

Wholly independent of my conclusion that the Ingram barges at all times remained the situs of the dispute between Ingram and Local 3, I find that the picketing at the Texas dock was statutorily permissible on other grounds. Contrary to the position elaborated by the General Counsel in his brief, the operation of loading Ingram barges was not the exclusive responsibility of Texas. The above-related testimony of Texas Foreman Blish, and the testimony by Texas Assistant Supervisor of Operations at Lockport, Edwin Rowley, contradict the General Counsel's position. According to them the loading of Ingram barges before July 20, 1958, had customarily been the joint operation of Texas and Ingram employees. The latter employees performed duties on the barges which were indispensible to their proper loading, for by regulating the flow of petroleum into the barge compartments they prevented the barges and their cargoes from damage by listing in the water. The testimony of Blish that in advance of the arrival of the Ingram barges on July 20 he had received unprecedented loading instructions from the Texas Industrial Relations Department that the work customarily performed on the barges by Ingram's tankermen would this time be performed by Texas employees bespeaks an arrangement between Texas and Ingram whereby the former assumed the performance with its employees of work which but for the strike against Ingram would have been performed by the latter's employees. This transfer of struck work by Ingram to Texas created an alliance between them whereby Texas lost its neutrality in the Local 3 dispute with Ingram. N.L.R.B. v. Business Machine Office Appliance Mechanics Conference Board, Local 459, etc., 228 F. 2d 553 (C. A. 2) and the Board's decision in that case reported at 111 NLRB 317, 329 (the finding of alliance between Royal and Manhattan); Douds v. Metropolitan Federation of Architects, etc. (Ebasco) 75 F. Supp. 672 (DCSDNY). That this was an arrangement devised by Ingram to "protect its employees, from injury and abuse at the hands of its striking employees from injury and abuse at the hands of its striking employees," and "to prevent the premises of [Texas] from becoming a common situs for picketing" by Local 3, does not alter the inescapable fact that Texas assumed the performance of Ingram's struck work pursuant to arrangement with the struck employer. Nor am I convinced that the struck work was so "miniscule," as characterized by the General Counsel, that it should be disregarded in determining that Texas by its assumption became Ingram's ally. I am not aware that in the formulation and acceptance of the "ally" concept by the Board and Courts the importance of the struck work is weighed and balanced in relation to other work involved in the total operation of which it is an indispensable part. The significant fact is that the loading operations in this case could not have proceeded without performance of the duties regularly carried out by Ingram's employees and that Texas employees were directed to take them over pursuant to an understanding between their employer and Ingram.

In finding that Texas had formed an alliance with Ingram I have considered the General Counsel's argument gleaned from the *United Marine Division* decision, *supra*, that Texas was not in the face of the strike against Ingram "obligated to sit idly by lest [it] forfeit [its] status as a neutral," but could "without risking the protection Section 8 (b) (4) (A) accords [it] against the extension of [its] business of economic conflicts in which [it] is not involved, seek other suppliers, devise other methods, and employ other means to enable [it] to continue [its] business

on as nearly normal a level as possible." This privilege of self-help, however, is not an unqualified authorization to a secondary employer to perform with its employees the struck work of its supplier of services, on the struck employer's equipment, and by arrangement with that employer. Texas could independently have used its own employees or the employees of any employer to load and transport its fuel without sacrificing its neutrality, so long as this did not involve the arranged replacement of Ingram's employees by Texas employees to perform the services for which they were hired by Ingram. For example, Texas could with impunity have chartered the barges of other shipping concerns and could even have used its own employees to load their barges. This it did not do. Instead, it merely substituted its employees for Ingram's to do their work for Ingram's benefit. If in the process Local 3 were statutorily forbidden to picket the loading of the barges, Texas' neutrality could have been a potent weapon used by Ingram to defeat the strike against it. The allied doctrine would thereby have no meaning. In this connection, I observe, contrary to the General Counsel's view of the record, that the loading of the barges was as essential to the conduct of Ingram's transportation business as it was to Texas' business of refining and distributing petroleum.

Because the picketing by Local 3 was in its entirety conducted at a common situs which at all times harbored the locus of the dispute with Ingram, and Local 3 conformed its picketing to the Moore Drydock requirements, and because Texas was not during the picketing a neutral whose premises were shielded by the Act from picketing during Local 3's dispute with Ingram, but was instead Ingram's ally, I find that Local 3 did not by picketing at the Texas

dock at Lockport, Illinois, from July 20 to August 7, 1958, violate Section 8 (b) (4) (A) of the Act.

c. Section 8 (b) (1) (A) violations by Local 28

The General Counsel ascribes responsibility to Local 28 for the Section 8 (b) (1) (A) violations which I have found were committed by Local 3. Because, as I have already stated, I find in this report that Local 28 is not a labor organization within the Act's meaning, it may be held responsible as a violator of the Section 8 (b) provisions of the Act only as an agent of Local 3. See Di Giorgio Wine Company, 87 NLRB 720, enfd., 191 F. 2d 642 (C.A.D.C.), cert. den., 342 U. S. 869; International Organization of Masters, Mates and Pilots of America, Inc., AFL-CIO, et als., 125 NLRB No. 19. The General Counsel contends that Local 28 became such agent by participating with Local 3 in its strike against Ingram as a joint venturer or cosponsor. The Respondents take a contrary view. They urged that the record not only fails to show any evidence of an association between Local 3 and Local 28 in the course of their disputes with Ingram, but that the record convincingly shows that each organization pursued different and separate courses against Ingram, Local 3 by a strike, and Local 28 by a civil court action against Ingram for breach of contract. I am persuaded, for the reasons hereinafter stated, that Local 28 did participate with Local 3 in its strike against Ingram, and accordingly became a cosponsor and agent of Local 3. As such, I find it responsible with Local 3 for the violations of the Act committed by the latter in its strike against Ingram.

During times relevant to these proceedings Locals 28 and

3 were quartered in the same office in St. Louis where they had a single telephone listing in the name of Local 28, utilized the services of a single clerk, and shared the expense of maintaining the office, rent, and the clerk's salary. The Local 28 business agent, E. A. Adams, had in the past simultaneously served as the paid business agent of Local 3. He had resigned his Local 3 post in May 1957 and continued thereafter only as the Local 28 business agent. Upon Adams' recommendation he was succeeded as the Local 3 business agent by Harry Rutan. The latter had been Adams' assistant in his capacity as the Local 28 business agent. Rutan continued as Adams' assistant to Local 28 after he became the Local 3 business agent. Despite Adams' formal resignation as the Local 3 business agent, he remained the only person with authority to sign checks for the withdrawal of funds from the Local 3 account with its bank in St. Louis, and this authority continued until the account was closed by a final withdrawal by a check signed by Adams in November 1958.

The tight functional relation between Locals 28 and 3 coupled with their identical disputes with Ingram over its unilateral imposition of the three-quarter day off for each day worked arrangement for all personnel on its boats, including Local 28 and Local 3 members, provides a basis from which it may fairly be reasoned that these locals would tend towards cooperative action in their disputes with Ingram. I assume that Local 28 was not oblivious to the fact that successful strike pressure by Local 3 to compel Ingram's rescission of the three-quarter day off arrangement and restoration of the former day off for each day worked would redound to its benefit in securing this same result for its members. Local 28's activities during Local 3's

strike must therefore be considered in the context of its attraction to Local 3, in determining whether these activities reveal a joint venture in that strike.

As related, Ingram's masters tied up the boats on which they were sailing when the Local 3 strike messages were received. While the boats were tied up the masters, mates, and pilots, all of whom were Local 28 members, remained aboard as security crews. When replacements for the striking Local 3 deckhands were brought aboard, the masters, mates and pilots uniformly refused to work and left their boats. In addition, some, the aforementioned Howell, Johnson, and McReynolds and possibly others, added their own violence to the violent conduct of Local 3 pickets who sought to prevent operation of the boats by replacements. I have refrained from finding Local 3 responsible for such conduct because of lack of proof that the activities of the Local 28 members were solicited by an agent of Local 3 or were committed in his presence. I do, however, consider this conduct and the general refusal of the masters, mates, and pilots to work as indicative of Local 28's support for the Local 3 strike.

Adams, though called by the General Counsel as a witness, refused to testify. The record, nevertheless, includes his testimony in the Federal District Court injunction proceeding which preceded the hearing in this case. There Adams admitted his interest in the Local 3 strike; that he was informed of its developments by Rutan whom he supervised as his assistant and to whom he gave orders; that he knew of the refusal of Local 28 members to work during the strike, but that he took no action to induce them to work despite the no-strike clause in the contract with In-

gram which Local 28 considered binding. That Adams and other responsible officials of Local 28 knew of the refusal by their members to work during the strike and not only failed to discourage this refusal, but as a matter of Local 28 policy approved it is further revealed by the following evidence. Lee C. Brazie, a Local 28 trustee since 1955, claimed that Adams and the Local 28 trustees had after the start of the Local 3 strike decided that Local 28 could not strike because it was bound by the no-strike clause in its contract with Ingram, and that Local 28 should direct its members not to picket. While admitting that he knew that Local 28 had advised its members that Local 3 was on strike, he testified that he could not recall what advice was sent them about respecting Local 3's picket lines. He significantly added, however, "it's always understood, of course, that we respect a picket line." Harold Heule, a Local 28 member, had been the pilot of the Dyer when this boat was tied up at Henderson, Kentucky, on July 6, 1958. That day Heule, at the direction of the boat's master, called Adams for instructions. Heule testified that Adams advised the Local 28 members to remain aboard until Ingram asked them to leave, and then not to cause trouble; that Adams had noted that there was not then a Local 3 picket line about the boat, but "that we would not cross the picket lines." Adams must also have learned about the violent acts of the Local 28 members in support of the Local strike. There is no proof that he or anyone in behalf of Local 28 repudiated or discouraged this conduct. On the contrary, after Local 28 resorted to its own strike action against Ingram, Wayne Johnson, whose violent conduct of July 21, 1958, has heretofore been described, was designated by Local 28 as its strike captain thereby denoting its approval of his prior conduct during the Local 3 strike.!

I appreciate that traditional union sentiments might have impelled Local 28 members individually not to work with replacement for members of their sister local who were on strike. The uniformity of such refusal by Local 28 members, however, together with Local 28's acquiescence, approval, and encouragement of their action impresses me that this was not just spontaneous conduct by individuals, but rather a concerted response to the direction and will or their organization.

There is other evidence which shows affirmatively that Local 28 approved and even directed its members not to work aboard their boats with replacements for the striking Local 3 members. Captain Charles R. Hutchinson, who appears to have been master of the vessel E. B. Ingram when it was tied up during the strike on July 6 at Paducah, Kentucky, remained aboard as part of the security crew. He testified without contradiction that on July 6 or 7 a person who identified himself as Walter Gass circled the Ingram tow in a motor boat and issued instructions to him. Hutchinson questioned his authority and declared his intention to speak to Adams to determine what he should do. Thereupon Gass told him "your orders are to get off when they start to take this boat out." Gass, according to the Local 28 July-August 1958, "News Letter" to its members, signed by Adams, had been an organizer or the MMP International who, because of curtailed organizational work, "was working in the interest of Local No. 28." While I expressed doubt at the hearing that the General Counsel had sufficiently proved the nature of Gass' agency so that I could be satisfied that his order to Hutchinson was within the scope of his authority and binding upon his principal, Local 28, I am now upon consideration of the entire

record disposed to find that his authority to issue the order in question was sufficiently proved. While ordinarily mere proof that an agent was working in the interest of his principal would have been too vague to support a finding of specific authority, I so find here because of the refusal of the Respondents to provide evidence and of Adams to give testimony pursuant to the subpenas of the General Counsel. In the circumstances, I accord the General Counsel's proof its most favorable construction and find that Gass' order to Hutchinson was issued within the scope of his authority to act in behalf of Local 28's interest. This order constitutes an express directive by Local 28 to its member not to work with replacement for Local 3's strikers, and is clear proof of Local 28's support for Local 3's strike.

The most compelling proof of Local 28's participation in Local 3's strike consists of the undenied admission by Rutan on July 21, 1958, during the course of the picketing at the Texas dock in Lockport to Texas Attorney Bender that he, Rutan, lacked authority to withdraw the pickets, and that this action could be authorized only by Adams. Rutan had acknowledged on July 12, 1958, to Texas officials at Texas' Mount Vernon Refinery in the course of his discussion with them concerning the troubles that Locals 28 and 3 were having with Ingram that he represented both organizations. That Rutan was Adams' subordinate as a Local 28 agent and took orders from him is incontestably established. His statement to Bender was clearly within the scope of his authority to act as Adams' assistant. In these circumstances, I can construe Rutan's statement to Bender only as meaning that he, Rutan, was directing the picketing under the authority of Adams. In the full context of Local 28's affinities to Local 3, the identity of their disputes, and the various indications which I have related of Local 28 interest in and support of Local 3's strike against Ingram, I deem Rutan's admission as clear proof of Local 28's participation with Local 3 in its strike as a joint venturer or cosponsor. The clear implication of Rutan's admission is so forceful as to satisfy me even without reference to other factors that Local 28 was a participant with Local 3 in its strike. This conclusion is not logically deterred by the fact that Local 28 did not formally declare a strike against Ingram, that it decided upon a civil action against Ingram for breach of contract, and that it so advised its members. Local 28 could have done all this and still could have cosponsored the strike by Local 3. As a joint venturer or cosponsor of that strike, Local 28 was Local 3's agent and with it responsible for its conduct during the strike violative of Section 8 (b) (1)(A) of the Act, and I so find.2

is made without reliance upon testimony by Captain Hutchinson concerning conversations during the strike with Local 28 trustee, Captain Hass. At most, I would construe the statement ascribed to Hass as his personal agreement with Hutchinson's refusal to work during the strike, and not as an official directive as an agent of Local 28 to Hutchinson not to work. Nor have I relied upon evidence concerning the report by Captain Zimmer in his typewritten copy of his ship's log to Ingram for July 6, 1958, as proof that he had been ordered by Adams on that date to tie up his vessel, and thus to support the Local 3 strike. Had this entry been made in the rough or official log which was required to be kept on the vessel, I would have relied upon it as proof of the fact denoted by the entry. I cannot, however, accord the typewritten copy the same dignity as the official log from which it differed. Zimmer's testimonial denial of any contact with Adams on or about July 6 nullifies any possible value as proof which the typewritten copy might have had absent Zimmer's testimony. I have also placed no reliance on the testimony of Mack Brewer, from which the General Counsel would have me find that Local 28 paid strike benefits to its members who did not work during the Local 3 strike. Brewer's testimony is too uncertain, confused, and even implausible to permit reliance thereon.

Local 28's Alleged Status as a Labor Organization

Section 2 (5) of the Act defines a labor organization as any organization of any kind . . . in which employees participate and which exist for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work. (Emphasis supplied.) The General Counsel and Charging Parties vigorously contend that Local 28 is a labor organization within the meaning of Section 2 (5). The Respondents firmly deny this.

There is no dispute between the parties about the applicability to Local 28 of all portions of the statutory definition of a labor organization except the phrase "in which employees participate." The General Counsel maintains it has been proved in this case that employees, as that term is defined by Section 2 (3) of the Act, do participate in Local 28. The Respondents assert this has not been proved, but on the contrary the record shows that only supervisors, as that term is defined by Section 2 (11) of the Act, participate in Local 28.

The General Counsel and Counsel for Ingram concede that the masters on Ingram's boats and on the boats of other employers who have membership in Local 28 are supervisors. They assert, however, that the pilots and mates on Ingram's boats and on boats of other employers are not supervisors but are employees, and that their membership in Local 28 determines its status as a labor organization. They also maintain that the phrase "in which employees participate" is not limited to membership in the

organization by employees, but equate participation with representation or even attempts to represent employees in collective bargaining by the alleged labor organization. In this connection, the General Counsel and Counsel for Ingram urged during the hearing that Local 28 either represented or sought to represent a classification of employees known as "steersmen." There is no reference, however, to this position in their briefs.

The Respondents oppose the General Counsel's position in the foregoing respects both on the facts and law. They say that only supervisors are eligible for or are admitted to membership in Local 28, and that all masters, mates, and pilots including those who serve Ingram, as well as other employers are without exception supervisors. The Respondents further deny that the record proves that Local 28 has ever represented or sought to represent "steersmen," or that as a matter of statutory definition it could be considered a labor organization simply because it represented or sought to represent such persons, assuming, but not conceding, it has been proved that steersmen are employees. The Respondents interpret the phrase "in which employees participate" as meaning membership by employees in the alleged labor organization and nothing short of membership with its normal perquisites.

The General Counsel asserts, and with this the Respondents do not disagree, that in determining supervisory status "the important thing is the actual duties and authority of the employee, not his formal title." N.L.R.B. v. Quincy Steel Casting Co., 200 F. 2d 293, 296 (C. A. 1). This is the controlling principle to be applied in this evaluation of the great mass of evidence provided by both sides in this case

concerning the status of the mates and pilots as supervisors or employees.

Before reciting and analyzing the evidence, it is appropriate to note that Local 28 has bargaining relations with several employers who, like Ingram, are engaged on the same inland waterways in the transportation of goods by barges which are propelled by towboats. Local 28 had a membership of approximately 600 masters, mates and pilots during the time of the events in question, and at the time of the hearing its membership was approximately 750. Ingram's June 1, 1958, seniority list show that it then employed 10 masters, and 10 pilots. An April 15, 1958, list shows employment by Ingram of 10 first mates, and 4 second mates, licensed. It was stipulated that in July 1958 Ingram employed six second mates, unlicensed. The General Counsel could have established that Local 28 is a labor organization by proving that its membership includes employees whether they were employed by Ingram or by any other employer. Accordingly, witnesses for both sides testified concerning their knowledge of practices on Ingram's boats and on the boats of other employers with which they had familiarity.

Practices Aboard the Ingram Boats

Ingram operates five boats named E. B. Ingram, Arthur J. Dyer, Hortense B. Ingram, Nelson M. Broadfoot, and Alice Ingram. The Alice Ingram is distinguishable from all other boats in that it is smaller and has fewer members in its crew. The others are comparable in size and in the makeup of the complement aboard each. These differences will be noted as this account progresses.

The complement aboard each of Ingram's boats includes a master, pilot, first mate, and second mate. These persons are members of the deck department which also includes persons classified as deckhands, tankermen, a cook and cook's helper. The engineroom department, which is in no way involved in the question under consideration, includes a chief engineer and his subordinate engineroom personnel. While with insignificant exception there is uniformly aboard each boat a qualified master, pilot, first and second mate, there are occasional variations in the composition of the deck crew normally comprised of the deckhands and the tankermen. These variations, to which the General Counsel and Charging Party attach significance, will be later described.

Ingram's boats and barges sail from their home port at New Orleans the full length of the Mississippi River and enter its tributary waterways for distances of hundreds of miles. The voyages of these boats are as long as 30 or more days during which their complements are continuously employed. It is from this circumstance that there arose the employment condition whereby Ingram formerly allowed all personnel 1 day off with pay for each day worked and then unilaterally changed this allowance to three-quarters of a day off with pay for each day worked. Because of the continuous operation of the boats the personnel aboard them divide their duties. Each person stands what is termed a 6-hour watch, and is then relieved from duty for the next 6 hours by the person who takes over his duties. During a watch on each boat the deck complement includes the master or the pilot, who stand opposite watches, and the first mate or second mate who also stand opposite watches. On all boats except the Alice Ingram, there are also in the deck complement on each 6-hour watch two deckhands or tankermen, who in turn are relieved by two other deckhands or tankermen who stand the opposite watch. On the Alice Ingram there are times when there is only one deckhand on board who stands his watch together with the first mate, so that when the second mate stands his watch there is no deckhand on duty with him. At other times, however, there appear to have been two or more deckhands in the crew of the Alice Ingram, so that one or more deckhands stood watch with the first and second mates.

While most of Ingram's masters, mates, and pilots are licensed by the Coast Guard, there is no statutory or regulatory requirement that they have licenses. This is so because of the conversion in recent years from steam to diesel powered boats. During the era of steam engines the Coast Guard required licensing of persons in these classifications. There is no such requirement for them on diesel boats. The Coast Guard does require tankermen to be licensed, and it appears that some of Ingram's second mates although unlicensed in that classification are licensed as tankermen. The duties for which a tankerman is licensed involve only pumping operations aboard barges during loading and unloading of fuel cargoes. Accordingly, the tankermen in the crew perform the functions of deckhands or second mates except during loading and unloading operations aboard the barges.

The operation of an Ingram boat and its tow of barges involves the making up of the tow by coupling barges to each other and to the boat which pushes them. The tow, sometimes consisting of six barges may stretch ahead of the boat for a distance of over 1,000 feet. As the barges

are transported it is necessary to push them through locks which appear occasionally along the waterways being traversed. Special procedures are involved including uncoupling the barges and pushing them separately through the locks and afterwards reassembling the tow. In the course of a trip the boat and its tow may engage in several docking operations to drop off barges or to pick up others. Special techniques are involved in these operations.

During the foregoing activities, the master or the pilot, whoever is on watch, is stationed in the pilot house where by the manipulation of levers the boat and its tow are steered in desired directions. The first mate or second mate, whoever is on watch, along with the deckhands on watch are stationed during docking or locking procedures at strategic places on the boat or barges where by the use of lines which they cast out and tighten or slacken secure the boat and barges to control their movements. All these activities are carried out either pursuant to the preconceived plan of the master or pilot explained by him before docking or locking to the mate and deckhands, or without explanation it may be understood from experience what is generally expected from each person involved in the operation. The master or pilot from his higher vantage point in the pilot house may, and generally does, shout directions to the mate or deckhand nearest him. The mate himself may and does often shout directions to a deckhand near him. The mate and deckhands by prearrangement frequently send information by signals from their positions on the barges to the master or pilot so that he can determine the location and distances of the barges from the dock or lock wall. The high degree of cooperation required from all participants in the performance of these operations is self-evident.

The General Counsel's principal witnesses who testified concerning the authority and responsibilities aboard the Ingram boats of the masters, mates, and pilots were R. E. Bridges, Ingram's vice president and general office manager, Port Captain Rubin N. Cioll, and George D. Hutcherson, Ingram's personnel manager and purchasing agent. Bridges is Ingram's chief operating official responsible for the staffing and condition of the boats and barges. He also fixes Ingram policy for the operation of its boats subject to the veto of Ingram's president. He sometimes consults Cioll and Hutcherson in the formulation of policy. Cioll is responsible for the hiring and discharge of Ingram's requirements in the operation of the boats. Hutcherson hires mates, deckhands, and tankermen for the deck department of the boats. Bridges, Cioll, and Hutcherson periodically visit the boats and remain on board for a few days at a time while they observe conditions and occasionally instruct the personnel.

It is apparent from the testimony of each of the foregoing witnesses that Ingram has not reduced to writing any book or manual of instruction defining the chain of command or line of authority on its boats. Each had a concept with respect to the authority and responsibility of masters, mates, and pilots, but could refer to no tangible source in which these concepts are objectively outlined. While they asserted that the Ingram Book of Instructions which was kept aboard each boat or various publications issued by the Coast Guard or the United States Engineers provided at least a partial basis for their opinions as to the authority and responsibilities of the masters, mates, and pilots, they did not, nor has the General Counsel, referred to any specific area in these publications, some which are included in the record, containing any significant reference to the question at issue. My own examination of these documents fails to reveal any pertinent reference, except for some indication of the responsibility of masters. There is, however, one group of documents which overrides all other considerations determining the authority and responsibilities of Ingram's boat personnel. These are the contracts between Ingram and Locals 3 and 28 which the foregoing witnesses conceded they honor in defining that authority and responsibility. The fact, as I see it from the testimony of the General Counsel's witnesses, is that when masters, mates, and pilots are hired or assigned by Ingram to their respective positions it is understood by these persons what is expected of them functionally in the performance of their duties, and also what is the relative authority and obligation of each person aboard a boat to all others. This is so because the operation of an Ingram boat and tow is conducted in a manner consistent with practices on the river which have developed through custom and tradition with which all involved persons presume familiarity. It is essentially from these foundations that Bridges, Cioll, and Hutcherson expressed their views.

According to them the master is Ingram's agent on board the boat who is responsible for its total operation except for the maintenance and repair of the engines. He also is responsible for the conduct and performance of duties by the crew, and only he may discharge or lay off a crew member subject to investigation by Ingram. Only the master may enforce discipline on his boat. No one on the boat, including the master, may hire crew members except in rare emergencies. Nor any anyone on the boat promote, reward, or demote members of the crew. These authorities are exercised exclusively by Cioll and Hutcherson, and by the Ingram Port Engineer for engineroom personnel. Only the master has authority on his boat to entertain and handle grievances.

While the General Counsel's witnesses, particularly Cioll and Hutcherson, initially testified that only the master had authority to issue an order to the members of the deck department which they were required to obey, they withdrew from this position when confronted with the Ingram contracts with Locals 3 and 28. Having been referred to the pertinent clauses of the contracts they reversed their positions and conceded that pilots and mates, both first and second, had authority to issue original orders to deckhands which they were required to obey. Neither Cioll nor Hutcherson was at first willing to designate as officers anyone aboard the Ingram's boats other than the master or chief engineer. Presented with the contracts and Ingram memoranda to the boats they acknowledged that masters, pilots, and mates, both first and second, were referred to by Ingram as the deck officers on board the boats. In this connection, it was further conceded by the witnesses that Ingram does not distinguish between its officers as to their authority because they are not licensed by the Coast Guard. With these conditions established, the witnesses were shown the significant contractual clauses which identically provided that. Acknowledging that Ingram lived up to its contractual obligations, and conceding the precedence of contract clauses over all other considerations in Ingram's relations with its boat personnel, the witnesses finally

agreed that in addition to the masters, the pilots, and mates could issue orders to nonofficer personnel which had to be obeyed.

nothing herein contained shall be construed to limit the authority of the Master or other licensed officers of the boat operated by the Company in the discharge of their lawful duties, and the Company and the Union agree that the authority and legal responsibility of the Master and of the licensed officers are fully recognized and their orders shall be obeyed.

When the Ingram master is relieved by the pilot at the conclusion of his watch he generally retires to his quarters. He may leave instructions for the pilot's information such as to pick up or drop barges from the tow at various locations. He does not, however, leave detailed instructions as to how these or any other operations pertaining to the navigation of the boat and tow are to be performed. Because of the recognized experience of and confidence in the pilots there is no need for such instructions from the master. Having assumed his watch, the pilot exercises the same responsibility as the master for the navigation and safe conduct of the boat, tow, and personnel. In the performance of his duties it is sometimes necessary that he obtain the assistance of the mate or deckhands on his watch. This occurs while the boat and tow are enroute, as for example when in inclement weather or fog with poor visibility the pilot may require a man to go to the head of the tow to look out for navigational hazards and to signal their presence to him so that he can initiate procedures to avoid them. In the course of docking or locking operations, as previously described, the pilot may station the mate and deckhands at posts where in his judgment, considering the prevailing circumstances of current, wind, location of dock or length of tow, they would be in the most favorable position to help him in the performance of his functions. If prevailing conditions suddenly change, as wind and current sometimes do, the pilot in his judgment may require the mate and deckhands to shift positions and to vary the procedures he had earlier indicated.

Although Cioll insisted that Ingram holds the pilot responsible during his watch for the safe and careful navigation and conduct of his boat and tow, he was reluctant to concede that the pilot's directions in the course of the foregoing procedures were orders demanding obedience from the mates and deckhands, but sought to give the impression that the pilots merely voiced personal decisions or advice to the deck crew who had the real responsibility for tying up to a dock. Curiously, Cioll gave an account of a docking operation with a master in charge in which the master's communications to the mate or deckhands assisting him were without hesitation referred to by him as orders which the mate and deckhands obeyed. Cioll's unwillingness to regard the pilot's communications, like the master's, as orders appears as a partisan gesture. Notwithstanding his knowledge of the existence of the above-quoted clauses in the Local 3 and 28 contracts, Bridges consistently denied that anyone but a master had authority on an Ingram boat to issue an order.

In describing the duties and authority of Ingram mates, Hutcherson emphasized their participation with deckhands in the performance of manual work on the boats. This approach was consistent with Cioll's characterization of mates as "glorified deckhands" in whom Ingram had not reposed any authority to issue orders compelling obedience from others. Hutcherson testified that the mate is responsible for maintaining the deck department of the boat. This includes the cleanliness of the boat, the condition of the paint, the working order of the motor launch and other mechanical deck equipment, and the care of safety equipment. The manual labor involved in these operations performed by the mate with deckhands involves chipping paint and painting, scrubbing decks, cleaning windows, and repairing and maintaining the launch and mechanical equipment. Hutcherson related that while the mate carries out his responsibilities under the master's direction, it is nevertheless up to the mate to get the various jobs done and for this purpose they issue orders to the deckhands which they, as required by the contracts would have to obey.

The General Counsel and Counsel for Ingram presented testimony which they believe establishes that certain Ingram mates are merely employees because they perform their duties by themselves with no deckhands or other employee present over whom they could exercise authority. This testimony relates to the times when the crew of the Alice Ingram included a first mate and second mate and only one deckhand. The contention is that the second mate stands his watch by himself on the Alice Ingram and that he cannot be regarded as a supervisor in this circumstance. Two persons testified that they had been second mates on the Alice Ingram. One of these, Irvin A. Taylor, had been a deckhand for Ingram before his promotion to second mate in September 1957. As a deckhand he had belonged to Local 3. When he became a second mate his affiliation was

changed to Local 28. Taylor defaulted in his payment of dues to Local 28 and it appears that he ceased to be a member about April 1958 or at some time before the commission of Local 28's alleged unlawful conduct in this case. Taylor testified that after he became a second mate he served on other Ingram boats besides the Alice Ingram. The other witness was Mack Brewer who was also promoted by Ingram from deckhand to second mate. As a deckhand he had belonged to Local 3. When he became a second mate in 1957 he changed his membership to Local 28. He worked first as a second mate on the Arthur J. Dyer. He claimed that on this vessel he directed the deckhands. He believed that he spent about 4 months in 1957 on the Dyer and the rest of the year on the Alice Ingram. He also was on the Alice Ingram the first 6 or 7 months of 1958. Although he claimed at first never to have worked with a deckhand on his watch on the Alice Ingram, Brewer later conceded the possibility that he may have worked on this boat with two deckhands as well as two tankermen. He remembered that there were times when the Alice Ingram carried four deckhands or tankermen and it was necessary for them to rotate their sleeping time in the same beds. Cioll testified that Ingram rotated its mates on the Alice Ingram so that the same mates did not serve on this boat during the entire year of June 1957-1958.

The General Counsel and Counsel for Ingram presented other evidence to show that there were times on Ingram boats when the deck crew consisted of two, three, or even four mates all performing duties as deckhands or tankermen. They argue that because on such occasions these mates worked as employees while retaining their Local 28 membership, this necessitates a finding that Local 28

included employees in its membership and is therefore a labor organization. Cioll testified that there were 12 to 18 situations during the year and one-half before 1958 when a mate was assigned to the job of a deckhand. These were emergency situations and involved only a negligible proportion of the total yearly working time of any of the mates who were given a deckhand assignment. Generally, different mates received these assignments and only some were involved more than once. From other evidence in the record it is clear that those mates who occasionally were assigned to deckhand duties were actually performing as deckhands at these times, taking orders from, and responding to the directions of the master, pilot, and mates on their boats. Ingram at such times kept them on the payroll as mates so that they received the salary of this classification.

The Respondents offered testimony by several witnesses who had worked on Ingram boats in various classifications. James W. Coats had worked for Ingram from July 1952 until July 1958 as a master and pilot. His last employment had been as master of the Hortense B. Ingram. He had worked in practically every classification from deckhand to master on the river boats since 1935. As evidence of Ingram's high regard for him he revealed that Vice President Bridges twice had offered him the post of port captain before Cioll was chosen and that each time out of preference for his job as master he turned down the offer. He is a member and trustee of Local 28.

Coats testified that there was a definite chain of command on the Hortense B. Ingram. The master is first in command and followed in order by the pilot, first mate and second mate. When the master turns over his watch to a pilot the latter is in complete charge of the boat and may give any orders he sees fit to the mate or deckhands on watch with him. These are not just instructions being passed along from the master, but are original orders. In maneuvering the boat the pilot may tell the mate what he wants done and how it is to be done as for example in tying off a tow, passing through a lock, or in coming to or leaving a dock. The pilot may and usually does issue orders to deckhands for the safety of the boat and its navigation including the handling of the barges, checking running lights, putting carbon in the lights or concerning anything which may arise. The pilot, Captain Coats related, might have to communicate "a thousand and one things" to the mate and deckhands during his watch. The boat might run aground, weather conditions could force the pilot to order it to be tied up, and numerous other emergencies could arise. In these situations the pilot would ordinarily communicate with the mate to indicate what he wanted accomplished. The mate would then relay instructions to the deckhands.

What procedures the pilot would follow in going through a lock would depend on the variable factors governing the situation such as weather, high water, low water, the condition of the dam, how much water "was running," how much water was being held back, how many gates had to be opened, how many "bear traps" had to be opened, how many "wickets" were up or down, whether the barges were loaded or empty, whether the tow was small or large, the direction and velocity of the wind. The pilot has to weigh all these factors in making a judgment as to how to proceed. This is a command responsibility. Having made up his mind he explains his plan to the mate and this is done before arrival at the lock. However, the situation could

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change in seconds and the pilot would then have to convey revised orders to the mate or the deckhand nearest him. This is an ordinary experience according to Coats. The pilot's plan having been received by the mate, the latter proceeds to carry it out by stationing the deckhands at various places and giving them the required orders.

Docking the boat and tow involves the pilot in procedures comparable to those described by Coats in passing through locks and also entails the giving of direct orders by the pilot to the mate and deckhands in carrying out these procedures.

According to Coats, a mate, first or second, is responsible for the care of the deck. His job is to keep the boat clean and in a safe and navigable condition. For this purpose he requires the deckhands to perform such duties as keeping up the rigging including making lines and splicing wire. He is also in charge of the deckhands while making or breaking tow, going through locks, or in the performance of any deck work, and has authority to issue any orders or directions to them incident to the performance of their duties.

Coats was emphatic in his assertion that a master is empowered to discharge a deckhand and that in fact he had done so. In the exercise of that authority he would as master discharge a deckhand pursuant to the pilot's request for refusing to obey his order sooner than if the deckhand had disobeyed his personal order. He flatly declared that a deckhand would also be discharged for failure to obey the order of either the first or second mate.

Mark E. Lucas had worked for Ingram for 4 years until

October 1957 as a master and pilot. His last assignment had been as master of the Arthur J. Dyer. He also had a long history of service on river boats as a pilot and master for various shipping companies dating from 1936.

Lucas testified that an Ingram pilot while on watch may and does give orders to mates and deckhands just as the boat's master does on his watch. The mate directs the deckhands on watch with him and they are required to comply. Lucas claimed authority for the Ingram pilots and mates to discipline the deckhands working under them. He did not explain the form or manner of applying such discipline, except to indicate that he as master would severely reprimand deckhands for insubordination and that it was up to the master to discharge the deckhand if this were the pilot's recommendation. He declared that masters are guided by the principle of the river "to back up your officers."

Charles D. Callis, a former member of Local 3, had worked for Ingram from October 1957 to July 1958 as a deckhand on the Hortense B. Ingram, the Arthur J. Dyer, and the E. B. Ingram. He testified that he took orders on these boats without distinction from the masters, pilots, and mates, both first and second, and that he understood he was to carry out these orders to the best of his ability. Refusal to do so would have meant his discharge. The person whom he regarded as his immediate "boss" was the mate with whom he was on watch. He received orders from the pilot to tighten the tow, change carbon in the lights, what to do with certain lines during locking, to throw out bumpers, to go to the head of the tow in inclement weather, or to wipe the windshield of the pilothouse. He never refused to obey these orders for he knew that he would otherwise be dis-

charged. Mates would tell him what to do during lockings unless they were satisfied he knew without being told what was expected of him. However, if there were something out of the ordinary during a particular operation the mate would tell the deckhands just what he wanted them to do before he went to the head of the tow. He would be told by the mate during locking or barge spotting operations from which position the mate wanted him to work. He also took orders from the mates to paint and "soog" the boat. The latter duty involved washing down the boat inside and out.

Richard V. Schickling had worked as a deckhand for Ingram for about 6 months in 1958 on the Hortense B. Ingram. While on the forward watch he had taken orders from the master and first mate. On the after watch he took orders from the pilot and second mate. He received orders from the mate to soog the boat, or where to tie off a barge, make a coupling, or paint. The mate instructed him in splicing a line and cable and how to make up a tow. During locking procedure he took orders directly from the master such as taking up slack in a line, or to put a line on one timberhead rather than another. He was never on watch with the pilot during lockings. When he reported to the Hortense B. Ingram as a green hand he was told by the master what his duties would be. He was also told that if directed by the mates to do something he should "listen" to them. He was instructed in his duties by the mates. Other deckhands also showed him how to do various things.

Robert Wall had been a deckhand for Ingram for 2 1/2 years. He had last worked on the E. B. Ingram. His employment for Ingram ended with the start of the Local 3 strike. Wall had been a member of Local 3 and had been on its

contract negotiating committee. He testified that as a deckhand he had taken orders from the master, pilot, and first and second mates. He had been ordered by the mates to paint, clean the head, make locks and tows, clean the searchlights, put carbon in the lights, handle lines and to perform other like duties. During rain or fog or while the boat and tow were going under a bridge the pilot had ordered him to the head of the tow for observations. It was his opinion that refusal to carry out any of these orders would have resulted in his discharge.

Practices aboard the boats of other employers

Ostensibly to prove that pilots and mates who belonged to Local 28 and who were employed on the boats of employers other than Ingram were not supervisors, the General Counsel presented testimony by two masters for such other employers. The Respondents countered with the testimony of several witnesses.

Tommy L. Drury, a Local 28 member testifying for the General Counsel, is employed by the Rose Barge Line as a master on a towboat. He has worked for this employer for 5 years as a deckhand, mate, steersman, and pilot, and for 1 1/2 years before testifying as a master. The boats on which he had worked sailed the Mississippi and tributary rivers. He testified that officer personnel on Mississippi River boats include the master, pilot, mate, and chief engineer. As on Ingram boats, the Rose boats also have nonofficer deck personnel, and the work on the boats is performed by groups which relieve one another on their respective 6-hour watches. As master of his boat Drury is in complete charge

at all times that he is on board. He is relieved by the pilot who replaces him at the bridge, steers the boat, takes orders from the Rose home office, presumably by radio, and "supervises the men" as to "how he wants to do the work as far as dropping barges, picking up barges." While on watch the pilot is responsible for the safe navigation of the boat and the safety of the crew, and he must carry out orders, received from the home office or from his master. Drury may leave written instructions for the pilot when he is relieved with respect to picking up or dropping off barges, but he does not tell the pilot how to perform these operations. This is a matter of individual judgment and he would not require his pilot to use his methods and procedures. Besides, there are variable factors which the pilot would have to consider when he encountered them such as the way the river is running, the current, and wind. He does not know what the pilot might tell the deckhands during a given operation. He does have authority, however, to tell him how he wants them to perform their duties, as for example, when barges are to be picked up at a dock.

In performing such operations as tying up at a dock or picking up barges when he is on watch Drury does not always give the same instructions to the crew which is to carry them out. Nor does the pilot in these circumstances. Instructions must vary and do depending upon such factors as the length of the tow, the location of the dock, the presence of eddies, the existence of navigational hazards, and the condition of the weather. What instructions are to be given by the master or pilot depends upon individual judgment. In picking up or dropping off barges the pilot calls the deckhands to the pilothouse and tells them how he wants a particular job done. He usually selects those deck-

hands for particular duties with greater skill and experience. If a mate is also on watch the pilot will give the instructions to him.

As master, Drury's orders to the crew must be obeyed This is equally true of the pilot's orders to the crew. When the mate is on watch the master's or pilot's orders are transmitted through him to the crew. The mate has general supervision over all the deckhands and is described by Drury as the "overseer of the deckhands." He sees that the deckhands properly perform their functions. When barges are being delivered to or being picked up from a dock somebody must watch the deckhands to make sure they are properly performing their functions. If the mate is on duty he is the one who stands over them. Otherwise this is the pilot's responsibility. On Drury's boat there is only a first mate and no relief or second mate. Consequently, although the mate is on 24-hour call, there are times when he is not on duty. When the boat or barges are tied up to a dock the master or pilot on watch decides which lines go over first, or what kind of a line or wire should be used, and how much slack to give. Improper performance of this operation could result in the boat or barges breaking loose and possibly sinking or tearing up the dock.

Drury has not designated an order of command on his boat. He conceded, however, that in carrying out an operation the pilot may insist that the mate and deckhands do things his way, whether the mate believed it should be done some other way. He stated that circumstances could arise while he was asleep when the pilot might send for him, particularly in emergencies. This, however, is a matter for the pilot to decide. The pilot is not authorized to hire or dis-

charge a deckhand. Drury asserted that he would give great weight to his pilot's recommendation, but that before taking any action he would discuss the matter with the mate who in Drury's view was better acquainted with the deckhands. His personal investigation to determine the facts is in any event required in his view because of the governing labor contract provisions. Deckhands normally take their complaints about personal treatment and working conditions to the mate. If he is not on watch they could if they desired go to the pilot. If the deckhand's complaint concerned treatment by the mate, the deckhand would likely, if the master were not on watch, go to the pilot.

Code W. Grant, a Local 28 member, also testified as a witness for the General Counsel. Grant works as a master for a company in the towboat business on the rivers. He has worked on the rivers since 1930 as a deckhand, a mate, pilot and master. Work on his boat, like the others, is performed during 6-hour watches. He is relieved by the pilot who also is a Local 28 member. Grant testified that when the pilot is at the wheel "the boat is in his hands." By this he means that the pilot is responsible for the navigation and safety of the boat. In connection with such operations as tying barges on or off the pilot does just what the master would do. The actual physical operations incident thereto are performed by the deckhands. In his direct testimony Grant took the position that the pilot does little else on the boat but steer pursuant to the instructions given in advance by the master; that in the course of such operations as tying barges on and off the mate together with the pilot, but still following the master's original order, would decide how to put the barges in the tow. During these procedures only the mate is authorized to tell the deckhands what

to do. If the pilot shouts a direction to a deckhand even to catch a line he is overstepping his authority. Grant's testimony on cross-examination was substantially different. He conceded that the pilot's responsibility for bringing the boat and tow in safely is the same as the masters, and that this is not the mate's responsibility. The pilot, just as the master, in coming alongside a dock shouts orders to the crew concerning the specific handling of lines. The master may tell the pilot who relieves him about the existence of navigational hazards, but leaves their avoidance to the pilot. The pilot, he admitted, has authority to call on the mate and deckhands to perform specific operations, and if the pilot is not satisfied with their performance, as for example with the manner in which the tow has been lined up and secured, he is authorized to tell the mate to make changes. Grant acknowledged that pilots and mates, like masters, are officers who by virtue of such status are empowered to give orders to crew members. The master or pilot may give orders from the wheelhouse to the mate or crew members to accomplish what is needed to be done at a given moment. Such orders from the master or pilot to others are necessary for the safety of the boat.

Lee C. Brazie, a witness for the Respondents, is a member and trustee of Local 28. He is a master and pilot for the Mississippi Valley Barge Line Company and sails the Mississippi and tributary rivers. His experience on the rivers dates from 1930 having served since then as pilot and master for several companies. He testified that the master of his boat is in general charge and may issue orders to all personnel. The pilot is responsible for navigating the boat on his watch and has authority to and does issue direct orders to the mate or any of the deck crew on watch with him.

The mate has general charge of the deckhands and when he is near the pilot the latter will tell him what he wants accomplished by the deckhands. The mate, however, may be at the head of the tow or at some other point too far from the pilot for communication between them. In this circumstance the pilot issues his orders directly to the deckhands near him. Both first and second mates, who stand opposite watches, are over the deckhands and may issue orders to them. Their orders must be obeyed. A second mate could, if he saw fit, discharge a deckhand for refusal to obey his order. The pilot, however, does not have authority to discharge or even warn a deckhand that he will be discharged for improper performance of duty. The pilot is supposed to take up with the master his criticisms of deckhands. Brazie asserted, however, that he has never on any boat observed the refusal of a mate or deckhand to take an order from a pilot, and that if such refusal were to occur on his boat he would discharge the offending mate or deckhand. While mates have the responsibility for the performance of tasks on the boat involving manual duties, such as scraping paint, painting, or cleaning the galley, they are not themselves obligated to perform these duties. They occasionally join the deckhands in this work.

Jess D. Marks, a Local 28 member who testified for the Respondents, impressed me as the most knowledgeable witness for either side. His testimony merits complete reliance. For the past 20 years Marks has been a master for Federal Barge Lines one of the larger companies in the towboat business on the Mississippi and other inland rivers. Before then he had worked for several other companies as a pilot, mate and deckhand.

According to Marks, the master has supreme authority on his boat over all its operations. At the conclusion of his 6hour watch the master is relieved by the pilot who during his watch carries out the master's instructions pertaining to such activities as picking up barges and placing them in the tow. In the performance of these operations the pilot may issue appropriate orders to the mate or deckhands on duty. He may also order them to do whatever is necessary for the navigation of the boat. He might order them to tighten the tow, put up the "jack stack," check the running lights, put carbon in the lights, bring him coffee, or whatever comes to mind. During docking or locking operations the pilot is compelled to give various orders. He might in a single operation tell the mate to catch a line, to check a barge in, to throw or release a line. He may order a deckhand to perform the same functions, or to put out a bumper to prevent the boat from damaging a lock wall, to knock off "ratchets" or to take other actions to protect a barge from damage. Marks maintained that he has never seen a locking or docking operation in which it was not necessary for the pilot or master to issue some orders. This is so because of the variable factors which affect the execution of a particular operation, so that despite attempts to anticipate conditions, and this may be done with reasonable success. in the end the person in charge of the operation, whether it is the master or the pilot, must always make an individual judgment as to how to proceed and accordingly shouts his orders to the mate or deckhands. There are so many elements involved in these operations that it is beyond a man's ability to plan them with absolute finality. Factors which complicate docking and locking operations are the weight of the tow, the velocity of wind and current, the direction of the wind, and turbulence. Then, too, these factors

may react against each other so that the wind may be one way and the current another with variations at different points which will carry the boat and tow in varying directions. This necessitates the issuance of numerous orders to catch or release lines, or to turn the tow loose to prevent serious damage. While the pilot is "screaming" to the mate or deckhands, the mate is also screaming orders to the deckhands. Ordinarily, the master or pilot in preparation for a locking or docking procedure will rough out a plan to the mate who will then station the deckhands at certain places. However, as the operation progresses, the deckhands will be moved about. They are not given detailed directions for the particular operation before it begins because of the ever-changing conditions which enfold as the operation proceeds. They receive their directions as the operation continues. This apparently accounts for the shouting and screaming by the master, pilot, and mate during lockings and dockings.

While sailing the master or pilot will during their respective watches issue orders to deckhands for maintenance of the boat such as cleaning or painting. In bad weather they will send a deckhand to the head of the tow. They may require a deckhand to check the tow and to take care of problems on the tow. If the mate were handy these orders would be directed to him and he in turn would direct their performance by the deckhands. If, however, the mate were not about the orders would be issued directly to a deckhand.

Marks testified without reservation that the pilot's orders, like the master's must "absolutely" be performed by those receiving them. A mate's orders to a deckhand likewise require obedience. A disobedient deckhand who has been referred by the mate to the master for failing to carry out his order will be discharged. Marks has himself, as master, discharged deckhands in these circumstances.

Marks described the mate as foreman over the deck department. In general he directs the deckhands in the maintenance of the boat and in making up the tow. He will tell them what and when to do various things such as cleaning or scraping paint. He will give them such orders during dockings and lockings as may be required by the situation. While the first mate gives orders to the second mate with respect to performance by the deckhands, the second mate may originate such orders as he may feel necessary for the accomplishment of work by the deckhands. So far as the latter are concerned, they must be equally obedient to first and second mates.

Marks related that there is "quite a distinction" between officer and nonofficer personnel aboard a boat. Officers in the deck crew include the master, pilot, first and second mates. The essential difference between officers and those who are not in that category is that the former have the right to give orders which must be obeyed whereas the latter do not have such right.

Charles Burdick is a licensed first mate employed by the Sinclair Refining Company for whom he has worked for about 5 years as first and second mate. He has also worked on the rivers for another company. His total experience on riverboats covers about 6 years. Testifying for the Respondents he related that after the master or pilot has determined that certain jobs are to be done the mate picks the deckhand to do the necessary work and oversees the per-

formance of the work to make sure it is properly accomplished. The jobs consist of sooging, scrubbing, and other sanitation details, painting, and making up tows, caring for deck equipment by oiling winches and rachets, maintaining searchlights, and taking on stores and supplies. The mate instructs deckhands in splicing cable and lines, teaches them the differences between various lines, and shows them the placement and setting of the several lights on the boat. These functions are the same for both first and second mates whether licensed or unlicensed. He conceded that a mate will together with a deckhand handle lines and uncouple barges, but maintained that there are times when only the deckhands under him do these things. He has himself never put out running lights nor has he ever seen this done by a mate. He has as a mate done some painting, but this was not required of him. He has painted a sign or something else he chose to paint because he felt he could do it better than a deckhand. He could not recall ever scrubbing a deck or chipping paint as a mate. Although the master and next to him the pilot have authority to issue orders to deckhands in any circumstance, usually they do so when the mate is not available to receive their order. This is particularly true in locking operations when the mate is at the head of the tow and distant from the deckhands, whereas the deckhands on the stern are nearer the pilot. In this situation it is more convenient for the pilot to shout his order directly to a deckhand.

Burdick testified that a deckhand will be discharged for refusing to obey the order of a mate or pilot. If a deckhand refused to obey his order he would take him to the master whether he was on watch or not. He has himself never taken a disobedient deckhand to the master, but has seen other mates do this and knows that the deckhands were discharged for their disobedience. He has never witnessed the refusal of a deckhand to obey the order of a pilot.

Archie Thomas Hayden is a Local 3 trustee who testified for the Respondents. Hayden's experience on the riverboats consists of about 5 years' employment principally for Commercial Barge Lines and other companies. As a deckhand he received orders from the master, pilot, first or second mate. He was obligated to obey the orders of any of them. Failure to do so would have meant discharge. His duties included coupling and uncoupling barges while making up the tow or breaking it down during locking and docking procedures, tightening couplings, checking running lights, cleaning up the boat, painting and scraping. Mates do not clean floors or the galley. Mates could, if they desired, paint or scrape paint, or tighten lines on the tow. They were not however, themselves, required to do these things. He regarded the orders of a pilot as effective as the master's orders because they were both "officers."

Enrouting

Several of the Respondents' witnesses employed by Ingram on its boats testified concerning a practice referred to as "enrouting." As the boats sail along the rivers they may come to a city or other locality near the home of the master, pilot, or one of the mates. In this circumstance the particular officer may leave the boat to visit his home for a period of several hours. In the process the officer may be absent from the boat for variable periods ranging from 8 to 48 hours. In the absence of the master, the pilot will stand a continuous watch until he returns. The master, in the pilot's

absence, will do the same. The first and second mates similarly spell each other. When an officer thus absents himself from his boat he leaves information with the remaining officers as to where he can be reached if needed. Thus, the master may, except while traveling to and from his boat, be reached by telephone in an emergency. Several other witnesses working for other above-mentioned companies testified concerning the existence of this practice. While the General Counsel argues that the enrouting practice at Ingram should not be significantly regarded in this case, in part because it was not authorized by Ingram, the record shows otherwise. The aforementioned Ingram master, Coats, testified without contradiction that he had discussed the practice with Vice President Bridges and that he, Coats, would not have engaged in it without Bridges' consent. Moreover, according to Coats, Ingram's port captain, the aforementioned Cioll, himself engaged in the practice when he had been a master. Coats further testified that when the master is off the boat the pilot takes command, and that when the first mate is enrouting the second mate exercises his authority.

Steersmen

As noted, the General Counsel and counsel for Ingram had maintained throughout the hearing that Local 28 represented or sought to represent persons designated as steermen who they say are employees, and that Local 28 for this reason should be deemed a labor organization. The Respondents deny that the record proves that Local 28 represented or sought to represent such persons, but that in any event the General Counsel has not proved that they are employees. Furthermore, the Respondents deny that it has been

proved that steersmen, as such, are eligible for or are admitted to membership in Local 28, and finally they deny that it has been proved that there were even such persons employed on any of the riverboats during times relevant to this case.

The Ingram contract with Local 28 which ran from March 16, 1956, to March 16, 1957, provided:

One Steersman will be carried on the m/v Broadfoot, one on the m/v Dyer, and one on the m/v Hortense Ingram. They must have the following qualifications:

- (a) One year's service with the Company.
- (b) 100 miles of Pilot's License.
- (c) Furnish the Company with three letters of recommendations from Master-Pilot or Pilots working for the Company.

If at the end of six (6) months as Steersmen the man cannot present the Company with letters from three (3) Master-Pilot or Pilots under whom he has worked stating that he is qualified to stand a watch, he will be returned to his former position.

The wage rate for the Steersman shall be the same as that he was receiving for the position he was holding at the time he was selected to serve as Steersman.

During the negotiations for a new contract in early 1957 whatever agreements were reached between Ingram and Local 28 did not include provisions for steersmen or for a proposed pension plan. Negotiations concerning these subjects were to continue after the other agreements had been reached. No agreement as to these subjects was ever reached. On February 4, 1958, Local 28 had sent the following proposals concerning steersmen to Ingram with a covering letter attached signed by Business Agent Adams stating that the plan had been approved "by the men of your company:"

Plan For Steersmen

- Shall be according to Seniority with only Senior Mates acting.
- After the Mate gets the work lined up for the day, then he shall steer the balance of his watch when in river the Master deems safe for him to work in. This schedule shall be put into effect for a period of two years.
- After two years of steering while employed as Mate, he must obtain an original Pilot's license of at least 100 miles.
- He must be able to draw a chart of those sections of the river over which he has been working for the past two years.
- 5. After complying with the above provisions,

he shall be assigned as Steersman for a period of six months.

- During the period he is assigned as Steersman, he shall be permitted to do some handling to familiarize himself with this end of piloting.
- Steersmen shall receive time off at the rate of one half day for each day worked.
- If after acting as Steersmen for one year and he does not complete his license, he shall be reassigned as Mate on one of the smaller vessels.

According to Gilbert R. Schickling, an Ingram master and member of the Local 28 negotiating committee in 1957, the parties had reached an agreement on a complete contract which did not contemplate inclusion of provisions for the steersmen or pension-plans. These were matters which were left open for future discussion and for eventual inclusion by Ingram in its Book of Instructions to boat personnel.

There is no evidence to show that persons called steersmen worked on the boats of other employers sailing on the inland rivers during times relevant to this case. Such evidence as does appear indicates that during such times persons bearing this designation did not perform duties on any boats on the inland rivers. No witness in this proceeding, whether for the General Counsel or the Respondents, in his fulsome description of the complements on board the

towboats of the several shipping companies for whom they worked or with which they had familiarity related that there was a person called a steersman on any of these boats. One witness, the aforementioned Jess Marks, testified that his employer, Federal Barge Lines, had not employed a steersman on its boats "for some time." Another, the aforementioned master of a Rose Barge Line towboat, Tommy L. Drury, testified that he had once been a steersman, but that he was not then a member of Local 28. He added that the Rose contract with Local 28 contains no provision for steersmen.

Qualifications for Membership in Local 28

Article II, Section 1 of the Local 28 bylaws, revised 1955, provides:

This organization shall be composed of personnel acting in an officer capacity aboard sail or power-propelled vesesls on ocean, coast wise, Great Lakes and inland waters, who have been regularly admitted to membership and are in good standing.

The aforementioned Jess D. Marks had been a member of the Local 28 committee which in 1955 had been created to revise the organization's bylaws pertaining to qualification for membership. Donald L. Mullady, the president of Local 28, had held this office in 1955 when the foregoing committee submitted its report which resulted in revision of the bylaws. They testified that up to 1955 admission to membership had been conditioned upon possession of a license by the applicant. Because of the substitution of diesel-powered boats for steam-powered boats fewer mas-

ters, mates, and pilots were acquiring licenses and were thus barred by the then existing qualification from membership. The changes in the bylaws were incorporated to permit their eligibility for membership. The term "officer capacity" was incorporated in the bylaws with the intention that only a person who fulfilled the prerequisites of officership in his duties could qualify for membership. An officer, according to the meaning of the bylaws, as explained by Marks, means a person who on his boat has authority to give orders to the crew which must be obeyed. Mullady testified that officer within the meaning of the bylaws means a person who can issue orders with expectation of obedience from the crew and who may recommend discipline or discharge of disobedient crew members with the further expectation that his employer will follow his recommendation.

Analysis and Conclusion Concerning the Alleged Status of Local 28 as a Labor Organization

Determination of whether Local 28 is a labor organization or an organization of some other kind desends upon the status of the masters, mates, and pilots whom it admits to membership and represents in collective bargaining.³ If

I need not become involved in the contention at the hearing that Local 28 should be found a labor organization because it had represented or sought to represent Ingram's steersmen. Assuming this would have been a cogent contention if there had been persons employed by Ingram as steersmen, and if in fact steersmen were employees, the contention merits no attention because it has not been proved by the General Counsel, as part of his burden of proof, that there were such persons employed at relevant times or that steersmen are employees. Furthermore, no authority has been presented to me, and my own research failed to uncover any authority, for the proposition that an association of supervisors becomes a labor organization when it negotiates concerning a classification of employees which has no present existence. On the state of the record I find the contention with respect to Local 28's attempted representation of steersmen to be wholly without merit.

any such persons are employees, Local 28 must be regarded as an organization in which employees participate and, hence, a labor organization within the meaning of Section 2 (5) of the Act. National Maritime Union, AFL-CIO (Standard Oil Company), 121 NLRB 208; enfd. 274 F. 2d 167 (C. A. 2). Conversely, if the persons it admits to membership and represents are supervisors, Local 28 is not a labor organization within the meaning of Section 2 (5).

The requirement in the Local 28 bylaws that membership is limited to persons who are "acting in an officer capacity" and the informed explanation of Mullady and Marks that the quoted phrase refers to authority of applicants for membership to issue orders to subordinates which must be obeyed, do not by themselves conclusively settle the question of Local 28's status. While the Local 28 requirement for membership is a factor supporting the contention that all the masters, mates, and pilots who are its members are supervisors, that determination cannot be made without reference to the facts pertaining to their actual duties, responsibilities, and authority aboard the boats on which they work. I have thoroughly and meticulously considered all testimony and evidence bearing on the performance of duty, the empowerment and execution of authority of the masters, mates, and pilots belonging to or represented by Local 28 and find that the record overwhelmingly establishes that they are supervisors and not employees.

Section 2 (11) of the Act defines a supervisor as a person who in the interest of his employer has authority to take various actions affecting the status or performance of work of the employer's employees. The law is well established that the several forms of authority mentioned in Section 2

(11) are listed disjunctively and that investment of a person with any one of them is sufficient to constitute him a supervisor within the Act's meaning. N.L.R.B. v. Edward G. Budd Mfg. Co., 169 F. 2d 571, cert. den. 335, U. S. 908. Among the criteria included by Section 2 (11) for testing supervisory status is the authority "responsibly to direct employees" provided that such directions not of a merely routine or clerical nature, but requires the use of independent judgment. I am satisfied that by the application of this one test all masters, mates, and pilots on board towboats sailing the inland waterways must be found supervisors within the statutory definition.

From my analysis of the record I make the following summary pertaining to all masters, mates, and pilots on the tow boats on the inland waterways:

- Masters, pilots, and mates, both first and second, licensed or unlicensed, are regarded as officers by the employers for whom they work, and by the deckhands and all other deck personnel aboard their boats.
- 2. The term officer has a precise meaning to personnel aboard the boats. An officer is a person with authority to issue orders in the performance of work which nonofficer deck personnel must obey. The penalty for such disobedience is usually discharge by the master, and the penalty is imposed whether the offending crew member has disobeyed the order of the master or of any other officer aboard the boat.
- The responsibility of a pilot when he relieves the master is the same as the master's with respect to the safety

of the boat, tow, and the entire crew. In carrying out this responsibility the pilot is frequently confronted with complex procedures which involve skillful independent judgment. The pilot's judgments are complicated by variable changing factors, many of them unforeseeable, which do not permit his duties to be characterized as routine. In the performance of his functions the pilot must, and does, with authority issue orders to mates and deckhands which they must unhesitatingly and faithfully execute. Failure by the mates and deckhands or other deck employees to respond in this manner to the pilot's orders could result in serious damage to property and injury to person.

- 4. Mates have the responsibility for the accomplishment of a variety of tasks aboard their boats. Some of them are of a routine nature involving unskilled manual operations. Others, however, particularly during locking and docking operations and in emergency situations, involve the exercise of independent judgment in the issuance of orders to deckhands and other deck employees which require prompt and faithful obedience for the protection of person and property. With respect to the performance of all their responsibilities mates have authority to order performance of duty by subordinate deckhands and other deck employees who must obey these orders or risk discharge for disobedience.
 - 5. The power and authority of pilots and mates to command and obtain obedience to their orders is constant and may be applied at any time.

In sum, I find that the record insurmountably establishes that masters, pilots, and mates are individuals who in the

interest of their employers have authority "responsibly to direct" employees within the meaning of the quoted phrase as it appears in Section 2 (11) of the Act and are, therefore, supervisors as defined by that section. In concluding that they are supervisors I need not go beyond the assigned reason, and will therefore not dwell upon other possible reasons to support my conclusion which may be derived from some of the evidence indicating authority by pilots and mates to discipline employees or effectively to recommend their discipline.

In the light of the foregoing findings, I reject the contentions of the General Counsel and counsel for Ingram in their briefs that the orders or directions to employees from pilots or mates are "routine" or "mechanical," that they do not involve the exercise of "independent judgment," and that pilots and mates do not, therefore, responsibly direct employees in the performance of their duties. Nor can I perceive any basis for comparing the functions of mates and pilots, as the General Counsel would, with the inspectors in the Capital Transit Company decisions, 98 NLRB 141 and 105 NLRB 582, enf. 221 F. 2d 864 (C.A.D.C.), in which the Board held that certain inspectors were employees and not supervisors because they were "concerned primarily with equipment rather than personnel" and any direction or control of personnel by them was merely "incident thereto." The most cursory appraisal of the swift on-the-spot judgments of pilots and mates and the orders given pursuant thereto while maneuvering 1,000 foot tows in the face of unpredictable winds, currents, and weather conditions reduces to sheer implausibility any characterization of such judgments and orders as routine. The direct concern of pilots and mates with the conduct of subordinates to effect a safe and efficient locking or docking or to prevent a catastrophe in an emergency in which the boat, tow, and crew aboard are at the peril of the river and the elements may hardly be compared to the control over the streetcars and busses of the Capital Transit Company by its inspectors. I further regard as totally inapt the numerous comparisons in the briefs of the facts in the instant case with those in Board decisions holding certain repetitive or unskilled manual operations to be routine and not requiring the exercise of independent judgment in the issuance of orders or directions pertaining to them.

I accord no merit to the argument raised by the General Counsel that the authority of pilots and mates is only sporadically exercised. The Board's view and that of the Courts does not require a supervisor always to exercise his authority in order to retain his supervisory status. Although the ascendancy of the pilot to the master's post while the latter is absent "enroute" would, if that alone were the basis for a pilot's authority, be a mere "sporadic" exercise of authority insufficient to constitute him a supervisor, the reliance in this case is not upon that, but instead upon his constant power to command inherent in his status as pilot. The same is also true as to mates. In denying enforcement of the Board's order in the Ohio Power Company case, the Court of Appeals for the Sixth Circuit stated in its decision reported at 176 F. 2d 385, cert. den. 335 U. S. 908, that Section 2(11) "does not require the exercise of the power (responsibly to direct) for all or any definite part of the employee's time. It is the existence of the power which determines the classification." In that case it was the authority of the control operator to requisition and direct the services of employees in time of emergency which satisfied the Court that he met the statutory test of a supervisor. In so holding the Court stated it was immaterial "that an emergency is not always in existence." Because of its pertinence to the facts of the instant case, I include this additional language from the Court's opinion reasoning that the control operator there in question was a supervisor.

It is undisputed that in the absence of the shift operating engineer the responsibility rests upon the control operator to direct other employees in the handling of emergencies; that an emergency may require split second action, and that the control operator exercises this authority not as a matter of routine, but by the use of independent judgment. Significantly, the Board has since the Sixth Circuit's reversal of its decision explicitly endorsed the position declared by the Court. See Capital Transit Company, 114 NLRB 617 fn. 10 and 30. See also the adoption of this position by other courts of appeal in N.L.R.B. v. Fullerton Publishing Company (C. A. 9), slip opinion filed October 28, 1960, and N.L.R.B. v. Leland Gifford Co., 200 F. 2d 620, 625 (C. A. 1). Because pilots and mates are constantly clothed with authority to compel deck employees to comply with their orders in the exercise of their independent judgment, I find them for this reason to be supervisors. Wilson Transit Company, 80 NLRB 1476; Globe Steamship Company, et al., 85 NLRB 475.

I reject the contention that the performance of manual work by mates in carrying out some of their duties mitigates against a finding that they are supervisors. Passing upon a similar contention in the Wilson Transit Company case, supra, the Board stated:

The mere fact, however, that a supervisor spends a large part of his time in the performance of manual labor does not necessarily affect his status as a supervisor.

The General Counsel further argues against a finding that pilots and mates are supervisors because on a boat with only two deckhands on watch, the ratio of supervision would be only one supervisor to one employee. This is a circumstance which I have considered but do not in this case consider controlling. It is never by itself controlling but only a factor to be considered with all others in deciding whether an alleged supervisor really has the authority ascribed to him. The record shows that pilots and mates in the performance of their duties do in fact have supervisory authority over deck employes, however few in number such employees may be. The high ratio of supervisors to deck employees on the boats does not detract from the existence of that authority.

The General Counsel and counsel for Ingram have placed special emphasis upon the fact that on the Ingram tow-boat, Alice Ingram, there appears generally to be no deck-hand on watch with the second mate. In this circumstance the second mate has no employee under him to supervise. Obviously, a second mate assigned to this boat during times when this condition prevails is not a supervisor in the performance of his duties. See *Graham Transportation Com-*

⁴The Ironsides Company, 87 NLRB 1565, fn. 1; see Ramsey Motor Company, Inc., 99 NLRB 408, where the Board found a person to be a supervisor where his authority was over only one employee. In Republic Steel Corporation, 94 NLRB 1294, the Board said that notwithstanding proof of a high ratio of supervisors to employees "where the evidentiary facts show that supervisory status exists, we will so find."

pany, 124 NLRB 960. On the other hand, the record indicates that there are times when there are deck employees on the boat who are on duty with the second mate and who are supervised by him. Moreover, according to the testimony of Port Captain Cioll, Ingram rotates its mates on the Alice Ingram so that the same mates do not serve continually on this boat. At the same time it appears that all duty as second mate by Taylor and Brewer during most of the year preceding the period beginning July 1958 when the relevant events of this case had their beginning was on the Alice Ingram. The circumstances regarding their status during that period are therefore variable. During times when no deck employees were on watch with them, they were not acting as supervisors, but when such employees were present, they did act as supervisors. Exactly how much time was spent in either status is uncertain. To find that Local 28 which admitted these second mates to membership and represented them is because of these circumstances a labor organization seems on its face to lack propriety, especially as Local 28's membership during the events in question was about 600. I regard the participation of Taylor and Brewer, or of any other Ingram second mate with equal uncertain status to have had no significant effect on the real character of Local 28 as an association of supervisors. In this respect, I share the reaction of the Court of Appeals for the Second Circuit in National Marine Engineers Beneficial Association, AFL-CIO, et al. v. N.L.R.B., 274 F. 2d 167, where the argument had been made that MEBA was a labor organization because of proof that it had once filed a petition with the Board for representation of marine engineers on a certain boat. MEBA's constitution admits marine engineers to membership. The court declared in response to this proof. The inference that this shows that non-supervisory engineers participate in MEBA in a significant manner becomes somewhat less shattering when examination of the petition discloses that the number of employees in question was two.

Several other arguments were raised in the brief of counsel for Ingram which require only short answers. It is argued that because in other Board and Court proceedings the International Organization of Masters, Mates and Pilots is found to be a labor organization, Local 28 should also be held a labor organization. The brief asserts that Local 28 is without autonomy and merely a subsidiary part of its parent. In answer I point out that the constitution of Local 28 and all other evidence in this record with respect to the manner in which it performs its business indicates its autonomy and separation from its parent. The brief says also that dire consequences would ensue if Local 28 were not found a labor organization and were able, free from the restraints of the Act, to force "unwholesome and unjust bargains upon maritime business firms with complete immunity." This is an argument which is not relevant to any issue before me. I, therefore, comment neither on its premises or propriety. Finally the brief urges that Local 28 be held a labor organization because of the Board's tendency to expand its jurisdiction over businesses by liberalizing its standards for the assertion of jurisdiction. As to this argument, I reply only that I do not appreciate its pertinence in this proceeding.

Having found that Local 28 is an association which admits to membership and represents only supervisors, I conclude that it is not a labor organization within the meaning

of the Act.⁵ Accordingly, I shall recommend dismissal of all allegations in the Fourteenth Region complaint against Local 28, and the allegations of the Thirteenth Region complaint with respect to conduct committed by Local 28 after termination by Local 3 on August 7, 1958, of its strike against Ingram.

IV. The effect of the unfair labor practices upon commerce

The activities of the Respondents, set forth in Section III, above, occurring in connection with the operations of the companies described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

V. The remedy

Having found that the Respondents have violated Section 8 (b) (1) (A) of the Act, it will be recommended that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

⁵By motion dated October 13, 1960, counsel for the Respondents requested that I officially notice the Order of United States District Judge George H. Moore of the Eastern Division of the Eastern Judicial District of Missouri in Case No. 58 C 457 (1), Court No. 1, entitled Texaco, Inc. v. International Organization of Masters, Mates, and Pilots, Inc., AFL-CIO, et al. In this Order the court had dismissed the plaintiff's complaint on the ground that Local 28, MMP is not a labor organization within the meaning of the Act. Neither the General Counsel nor other parties opposed the Respondents' motion. I accordingly take official notice of the Court's Order. I have not, however, relied thereon in reaching the conclusion that Local 28 is not a labor organization, principally because it cannot be determined from the Order what facts governed its issuance by the Court.

On the basis of the above findings of fact and upon the entire record in the case, I make the following:

Conclusions of Law

- 1. Associated Maritime Workers, Local No. 3 International Organization of Masters, Mates and Pilots, Inc., AFL-CIO, is a labor organization within the meaning of Section 2 (5) of the Act.
- 2. Local 28, International Organization of Masters, Mates and Pilots, Inc., AFL-CIO, is not a labor organization within the meaning of Section 2 (5) of the Act.
- 3. Ingram Barge Company, the Texas Company, Commercial Barge Line, and Globe Fuel Products, Inc., are employers within the meaning of Section 2 (2) of the Act, and are engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.
- 4. The above-mentioned Local No. 3 and Local 28, and their agent, Harry Rutan, have engaged in acts of restraint and coercion, as hereinabove related, which interfered with the exercise of rights of employees guaranteed by Section 7 of the Act. The responsibility of Local 28 for these violations is predicated upon the conclusion that in the commission of the unlawful conduct it acted as the agent of Local No. 3.
- 5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

6. Those allegations of the complaint as to which specific findings of violation have not been made hereinabove have not been sustained.

RECOMMENDATIONS

Upon the basis of the foregoing findings of facts and conclusions of law and upon the entire record in the case, I recommend that the aforementioned Local No. 3 and Local 28, their officers, representatives, agents (including Harry Rutan), successors, and assigns, shall:

- 1. Cease and desist from restraining and coercing the employees of Ingram Barge Company by acts of physical violence, including the throwing of stones and rocks, the shooting of marbles or any other missiles, by threats of violence to and physical assaults on Ingram supervisors and property whether such acts are committed in the presence of Ingram's employees or under such circumstances as to insure they will learn of them, or by like or related conduct restraining or coercing Ingram's employees in the exercise by them of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activity for the purpose of collective bargaining or other mutual aid or protection and to refrain from any or all such activities except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.
 - 2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

- (a) Post in conspicuous places in their business offices and all places where notices to members are customarily posted copies of the notice attached hereto marked "Appendix." Copies of said notice, to be furnished by the Regional Director for the Thirteenth Region, shall, after being duly signed by a responsible official of each Respondent, including the aforesaid Harry Rutan, be posted by the Respondents immediately upon receipt thereof and maintained for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondents to insure that said notices are not altered, defaced, or covered by any other material;
- (b) Furnish to the Regional Director for the Thirteenth Region signed copies of the notice, marked "Appendix" for posting, Ingram Barge Company willing, for a period of sixty (60) days on bulletin boards of this employer, where notices to its employees are customarily posted;
- (c) Notify the Regional Director for the Thirteenth Region in writing, within twenty (20) days from the date of receipt of this Intermediate Report and Recommended Order, what steps the Respondents have taken to comply herewith.
 - It is recommended that all allegations of the complaint concerning which specific findings of violation have not been made be dismissed.

It is further recommended that unless within twenty (20) days from the date of the receipt of this Intermediate Re-

port and Recommended Order the Respondents shall notify said Regional Director, in writing, that they will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring Respondents to take the aforesaid action.

Dated at Washington, D. C., December 30, 1960.

THOMAS N. KESSEL Thomas N. Kessel Trial Examiner

APPENDIX

NOTICE

TO ALL MEMBERS OF

ASSOCIATED MARITIME WORKERS, LOCAL NO. 3, INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, INC., AFL-CIO, AND LOCAL 28, INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, AFL-CIO

PURSUANT TO

THE RECOMMENDATIONS OF A TRIAL EXAMINER of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, we hereby give notice that:

WE WILL NOT coerce or restrain the employees of INGRAM BARGE COMPANY by acts of physi-

cal violence for continuing to work for INGRAM BARGE COMPANY because of a strike against it by LOCAL NO. 3, by throwing stones and rocks, shooting marbles or any other missiles, by threats of violence to and physical assaults on INGRAM supervisors and property where such conduct directed against supervisors and property is committed either in the presence of INGRAM'S employees or under such circumstances as to insure they will learn of it.

WE WILL NOT by like or related conduct restrain or coerce the employees of INGRAM BARGE COMPANY in the exercise by them of the right to self-organization, to form, to join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection and to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by Section 8 (a) (3) of the Act.

ASSOCIATED MARITIME WORKERS, LOCAL NO. 3, INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, INC., AFL-CIO;

LOCAL 28, INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, INC., AFL-CIO; THEIR AGENT HARRY RUTAN

	(Organizations)	
Dated	By	
	(Title of Officer)	

This notice must remain posted 60 days from the date hereof, must not be altered, defaced, or covered by any other material.

EXCEPTIONS TO INTERMEDIATE REPORT

Now comes Ingram Barge Company, Charging Party herein, and to the Intermediate Report dated December 30, 1960, takes the following Exceptions:

- 1. To the failure of the Examiner to make findings and conclusions in connection with the post-August 7th conduct alleged in the Thirteenth Region complaint, Lines 22-33, Page 37; Lines 1-2, Page 38 of the Intermediate Report.
- 2. To the failure of the Examiner to make findings and conclusions in connection with the activities of Local 28 during November, 1958, regarding violations of Section 8 (b) (4) (A) of the Act, Lines 8-26, Page 38 of the Report.

- To the findings and conclusions of the Examiner on Lines 31-33, Page 41; Lines 1-29, Page 42 of the Report.
- 4. To the findings and conclusions of the Examiner, Lines 7133, Page 46; Lines 1-33, Page 47; Lines 1-32, Page 48; Lines 1-33, Page 49; Lines 1-33, Page 50; Lines 1-33, Page 51; and Lines 1-2, Page 52 of the Report.
- 5. To the findings and conclusions of the Examiner, Lines 6-12, Page 52 of the Report.
- To the credibility conclusions re witness Mack Brewer at Lines 36-41, Footnote 2, Page 58 of the Report.
- 7. To the findings and conclusions of the Examiner regarding practices aboard Ingram boats, Lines 1-33, Page 62; Lines 1-33, Page 63; Lines 1-32, Pages 64; Lines 1-33, Page 65; Lines 1-33, Page 66; Lines 1-33, Page 67; Lines 1-33, Page 68; Lines 1-33, Page 69; Lines 1-33, Page 70; Lines 1-33, Page 71; Lines 1-33, Page 72; Lines 1-33; Page 73; Lines 1-33, Page 74; Lines 1-33, Page 75; Lines 1-33, Page 76; and Lines 1-10, Page 77 of the Report.
- 8. To the findings and conclusions of the Examiner in connection with practices aboard the boats of other employers, Lines 15-33, Page 77; Lines 1-33, Page 78; Lines 1-33, Page 79; Lines 1-33, Page 80; Lines 1-33, Page 81; Lines 1-32, Page 82; Lines 1-33, Page 83; Lines 1-33, Page 84; Lines 1-33, Page 85; Lines 1-33, Page 86; Lines 1-20, Page 87 of the Report.
- 9. To the findings and conclusions regarding "enrouting", Lines 24-33, Page 87; and Lines 1-2-, Page 88 of the Report.

- 10. To the findings and conclusions of the Examiner regarding membership in Local 28, Lines 15-31, Page 92; and Lines 1-16, Page 93 of the Report.
- 11. To the analysis, findings and conclusion concerning the status of Local 28 as a labor organization, Lines 21-41, Page 93; Lines 1-33, Page 94; Lines 1-33, Page 95; Lines 1-33, Page 96; Lines 1-33, Page 97; Lines 1-33, Page 98; Lines 1-32, Page 99; Lines 1-35, Page 100; Lines 1-32, Page 101; Lines 1-33, Page 102; Lines 1-6, Page 103 of the Report.
- 12. To the failure of the Examiner in Paragraph IV of the Report, entitled "The Effect of the Unfair Labor Practices upon Commerce", to make conclusions that the violations of Section 8 (b) (4) (A) alleged by the General Counsel have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states, and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof, Lines 11-17, Page 103 of the Report.
- 13. To the failure of the Examiner in Paragraph V entitled "The Remedy" to provide a remedy for the violations of Section 8 (b) (4) (A) committed by Local 28, Lines 21-24, Page 103 of the Report.
- 14. To the conclusion of the Examiner that Local 28, International Organization of Masters, Mates & Pilots, Inc., AFL-CIO, is not a labor organization within the meaning of Section 2 (5) of the Act, Lines 11-13, Page 104 of the Report.

- 15. To the failure of the Examiner to conclude that the violations of Section 8 (b) (1) (A) of the Act by Local 28 were accomplished as a labor organization and not, as concluded by the Examiner, "as the agent of Local No. 3", Lines 21-28, Page 104 of the Report.
- 16. To the failure of the Examiner to conclude that the picketing by Local 28 after August 7, 1958, was an unfair labor practice affecting commerce within the meaning of Section 2 (6) and (7) of the Act, Lines 30-32, Page 104 of the Report.
- 17. To the failure of the Examiner to make Recommendations, both negative and affirmative, to remedy the violations of Section 8 (b) (1) (A) and Section 8 (b) (4) (A) on the part of Local 28, Lines 7-33, Page 105; and Lines 1-33, Page 106; and Lines 1-5, Page 107 of the Report.

And now, in the matter of general exceptions, Charging Party excepts:

- 18. To the complete Intermediate Report of the Examiner insofar as it finds and concludes that Local 28 is not a labor organization, and therefore fails to make any recitals, analyses, findings and conclusions, in connection with picketing in violation of Section 8 (b) (4) (A) of the Act.
- 19. To the complete failure of the Examiner to accord the proper weight in his analyses, findings and conclusions to the willful and deliberate failure by Local 28 and Local 3 to produce any records, documents, or witnesses subpoenaed by the General Counsel, and his failure to make

the lawful presumptions arising out of and resulting from such willful and deliberate refusal.

- 20. To the analyses, findings and conclusions of the Trial Examiner in connection with the status of Local 28 as a labor organization insofar as the Examiner used and relied upon testimony concerning the practices aboard the boats of other employers and practices on the river which have developed through custom and tradition. Such use and reliance is directly contrary to rulings of the Examiner during the course of the hearing in which rulings the Examiner precluded the offer of testimony with relation to these subjects.
- 21. To the Intermediate Report in its entirety, insofar as it purports to relieve Local 28 of any violation of the Act on the ground that said Local 28 is not a labor organization in that such finding and conclusion is not based upon the record as a whole, is not supported by substantial evidence, and is contrary to the law as expressed by the National Labor Relations Board and the courts of the United States.

Respectfully submitted,

MONROE & LEMANN Andrew P. Carter Stephen B. Lemann

(Signed) By: ANDREW D. CARTER 1424 Whitney Building New Orleans 12, Louisiana

> Attorneys for Ingram Barge Company

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the above and foregoing Exceptions and a copy of the Brief in support of these Exceptions, upon the following named persons by depositing same in the United States Mail, postage prepaid, certified:

> Albert Gore, Esq. Jacobs & Gore 201 No. Wells Street Chicago, Illinois

Joseph I. Nachman, Esq. Counsel for General Counsel National Labor Relations Board Washington 25, D. C.

J. M. Mitchell, Esq. Texaco, Inc. Houston, Texas

Dated this 24th day of March, 1961, at New Orleans, Louisiana.

(Signed) By: ANDREW P. CARTER

DECISION AND ORDER

On December 30, 1960, Trial Examiner Thomas N. Kessel issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the Intermediate Report. The Trial Examiner also found that the Respondents had not engaged in certain other unfair labor practices as alleged in the complaints and recommended that these allegations of the complaint be dismissed. Thereafter, the Respondents, the Charging Party, and the General Counsel filed exceptions to the Intermediate Report and supporting briefs.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel.

The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record. The Board hereby affirms the Trial Examiner's rulings made at the hearing and adopts his findings and conclusions.

ORDER

The Board adopts the "Recommended Order" of the Trial Examiner as its Order with the following changes:

- The initial paragraph of the recommended order shall be modified to read: "Associated Maritime Workers, Local 3, International Organization of Master, Mates and Pilots, Inc., AFL-CIO, its officers, representatives, and agents, including Local 28, International Organization of Masters, Mates and Pilots, Inc., AFL-CIO, and Harry Rutan, and its successors and assigns, shall:"
- 2. Paragraph 2 (c) of the Recommended Order shall be modified to read: "Notify said Regional Director in writing within 10 days from the date of this Order of the steps the Respondents have taken to comply herewith."
- 3. The Notice shall be modified so that the words "A DECISION AND ORDER" shall be substituted for the words "THE RECOMMENDATIONS OF A TRIAL EX-AMINER."2

DER."

In view of our finding that Local 28, International Organization of Masters, Mates and Pilots, AFL-CIO, is liable for the unfair labor practices found herein only in its capacity as agent of Associated Maritime Workers, Local 3, International Organization of Masters, Mates and Pilots, Inc., AFL-CIO, we modify the Trial Examiner's Recommended Order by making its provisions apply to Local 28 only in its capacity as agent of Local 3. See Chicago Calumet Stevedoring Co., Inc., 125 NLRB 113, 114.

2In the event that this Order is enforced by a decree of a United States Court of Appeals, the words "A DECREE OF THE UNIT-ED STATES COURT OF APPEALS ENFORCING AN ORDER" shall be substituted for the words "A DECISION AND ORDER."

- 4. The Notice shall be further modified so that the signature on said notice shall read: "ASSOCIATED MARITIME WORKERS LOCAL 3, INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, INC., AFL-CIO, and its Agents, LOCAL 28, INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, INC., AFL-CIO, and HARRY RUTAN."
- 5. The following is to be inserted in the notice below the sentence beginning: "This notice must remain posted . . .": Employees may communicate directly with the Board's Regional Office, 176 West Adams Street, Chicago 3, Illinois, Tel: Central 6-9660, if they have any question concerning this notice or compliance with its provisions.

Dated, Washington, D. C., Apr. 18, 1962.

Frank W. McCulloch, Chairman

Boyd Leedom, Member

Gerald A. Brown, Member

NATIONAL LABOR RELATIONS BOARD

(Seal)

[316]

BEFORE THE NATIONAL LABOR RELATIONS BOARD Thirteenth Region

In the Matter of:

LOCAL 28, INTERNATIONAL ORGANIZATION
OF MASTERS, MATES AND PILOTS, AFL-CIO,
and its Agents, E. A. ADAMS and
HARRY RUTAN,

Respondents,

and

Case Nos. 14-CC-125

14-CC-126

14-CC-127

INGRAM BARGE COMPANY

LOCAL 28, INTERNATIONAL ORGANIZATION
OF MASTERS, MATES AND PILOTS, INC.,
AFL-CIO; ASSOCIATED MARITIME WORKERS,
LOCAL NO. 3, INTERNATIONAL ORGANIZATION
OF MASTERS, MATES AND PILOTS, INC.,
AFL-CIO; and HARRY RUTAN, their Agent,
Respondents,

and

Case No. 13-CC-182

THE TEXAS COMPANY

LOCAL 28, INTERNATIONAL ORGANIZATION
OF MASTERS, MATES AND PILOTS, INC.
AFL-CIO; ASSOCIATED MARITIME WORKERS,
LOCAL NO. 3, INTERNATIONAL ORGANIZATION
of MASTERS, MATES AND PILOTS, INC.,
AFL-CIO; and HARRY RUTAN, their Agent,
Respondents,

and Case No. 13-CC-184

INGRAM BARGE COMPANY

[317] LOCAL 28, INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, INC., AFL-CIO; ASSOCIATED MARITIME WORKERS, LOCAL NO. 3, INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, INC., AFL-CIO; and HARRY RUTAN, their Agent,

Respondents, and Case No. 13-CB-679

INGRAM BARGE COMPANY

Hearing Room 1327, Midland Building, Chicago, Illinois, Wednesday, March 11, 1959

Pursuant to adjournment, the above-entitled matter came on for further hearing at 10:00 o'clock a.m.

BEFORE:

THOMAS N. KESSEL, Trial Examiner.

APPEARANCES:

JOSEPH I. NACHMAN, ESQ.,

and

HERBERT L. BOROVSKY, ESQ.,

176 West Adams Street, Chicago 3, Illinois, Counsel appearing on behalf of the General Counsel, National Labor Relations Board.

MESSRS. JACOBS & RATNER,

By

MOZART G. RATNER, ESQ.,

ALBERT GORE, ESQ.,

and

MARSHALL G. FIELDS, ESQ.,

201 North Wells Street, Chicago, Illinois, appearing on behalf of Local 28, International Organization of Masters, Mates & Pilots, Inc., AFL-CIO; Associated Maritime Workers, Local No. 3, International Organization of Masters, Mates and Pilots, Inc., AFL-CIO; and Harry Rutan, their Agent, Respondents.

J. M. MITCHELL, ESQ.,

and

GEORGE A. BENDER, ESQ.,

P. O. Box 2332, Houston 1, Texas; 332 S. Michigan Avenue, Chicago, Illinois, appearing on behalf of The Texas Company, Charging Party.

MESSRS. MONROE & LEMANN

By

ANDREW P. CARTER, ESQ.,

1424 Whitney Building, New Orleans, Louisiana, appearing on behalf of the Ingram Barge Company, Charging Party.

[330] TOMMY LEROY DRURY

a witness called by and on behalf of the General Coonsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Nachman)

Q By whom are you employed? A Rose Barge Line, Marseilles, Illinois.

Q In what capacity? What work do you perform for Rose Barge Lines? A I am the Master of the tow boat Cindy - Jo.

Q How long have you been employed by Rose Barge

Lines? A Five years.

Q What capacity have you served in for Rose Barge Lines? A Deckhand, mate, steersman, pilot and Captain.

[348] Q (By Mr. Nachman) What function does the Mate perform? A Well, he is overseer of the deckhands. Pilot tells him how he wants to drop the barges and he goes out and tells the deckhands how to pilot, how the Pilot wants it done.

Q In other words, do I understand correctly that when there are barges to be dropped or certain work to be done in connection with the barges, that the Pilot tells the Mate what work is to be done? A Yes, sir.

Q And the Mate sees that the deckhands carry out their functions in proper manner. A Yes, sir.

Q Does the Pilot of the boat have the authority to direct the Mate in the performance of his work?

MR. GORE:

May I have that question read back, please?

TRIAL EXAMINER:

Please read it.

[349] (Question read.)

THE WITNESS:

Yes.

[352] Q Does the Pilot have the authority to hire or fire any personnel? A He doesn't have authority to fire or hire. He can recommend

[353] they be fired or hired.

Q He recommends it to whom? A The Captain.

Q What do you, as Captain, do if a recommendation of

that nature is made to you? Do you give that recommendation great weight or not? A Yes. If it is me that is captain, I talk it over with my Mate.

[362] Q During the time the pilot is on duty, — strike that. You have told us, I think, that the mate has the responsibility for the performance of the work which is done by the deckhands. A Yes, sir.

Q During the time that the pilot is on duty, does he have the authority to take over and direct that work which is normally performed by the mate? A I would say he would if the mate is not out there.

Q What work would he take over and perform of the mate? A He could tell him what to do. What he wanted to do, he would tell the deckhands.

Q What would he tell the deckhands normally that he wanted to do? Take a specific instance. Suppose he were going to pick up three barges at a certain dock. What would he tell the deckhands, assuming the mate were not on duty? A Well, he would call them up there and tell them how he wanted to go about picking them up.

Q Take a typical case and tell us what he would tell them.

[363] A I don't know what he would tell them. I mean, as far as the pilot. Each guy has got different ways to go about doing it. He might do it this way, and I come along and do it this way.

[372] Q During the times you might be picking up or dropping barges that the mate would not be on deck, do you have a head deckhand? A Most usually, Yes.

[373] Q Does the lead man, lead deckhand have any function to perform during the time that the mate is off duty? A If the pilot calls him up and tells him that he wants him to give the signals out there, yes, order picking up barges.

Q Is that the ordinary procedure that those signals are then communicated by the lead deckhand or might they be communicated by any of the deckhands? A Well, ordinarily by the lead deckhand.

Q He conveys the orders, the directions that are given by the pilot to the deckhands. Is that correct? A Repeat that, please?

Q I say, and the lead deckhand conveys the directions, given by the pilot to the deckhands proper, who are doing the tying on or tying off of barges. Is that correct?

MR. GORE:

I object to the question, to the characterization as directions. I think the witness has indicated that these are signals that are given upon which, —

TRIAL EXAMINER:

All right. Let us substitute the word, signals, or directions.

THE WITNESS:

Yes, he tells the rest of the deckhands.

[415] RECROSS EXAMINATION

Q (By Mr. Gore) ...

[419] Q As far as the pilot telling the lead man what to do in tying up, in such cases where the mate is not around, you know some circumstances don't you, where a crew member other than the lead man was given the job to give the signals? A Well, I know different men, but my pilot he always picks a man that he wants. I mean, on his watch for his lead deckhand.

- Q Your pilot normally picks his lead deckhand? A Yes.
- Q He has the authority to pick anybody, doesn't he? A Yes, sir.
 - Q When you were a pilot did you always pick your own lead

[420] deckhand? A Yes, sir.

TRIAL EXAMINER:

Does a lead deckhand get paid any more money than the other deckhands?

THE WITNESS:

No, sir.

Q (By Mr. Gore) And the lead deckhand doesn't have

[372] Q During the times you might be picking up or dropping barges that the mate would not be on deck, do you have a head deckhand? A Most usually, Yes.

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[420] deckhand? A Yes, sir.

TRIAL EXAMINER:

Does a lead deckhand get paid any more money than the other deckhands?

THE WITNESS:

No, sir.

Q (By Mr. Gore) And the lead deckhand doesn't have

the authority to give orders to the other deckhands, does he? A Well, my lead deckhand did, if I called him up and give him the orders.

Q He transmitted your orders? A Yes.

Q When you come to tying up and untying a vessel, it is a little more than just throwing a hitch over a stanchion, isn't it? A Well, yes. It's got to be tied up secure.

Q And you testified originally there are occasions where you decide which lines are going over first. A Yes, sir.

Q Whether you are going to use a spring, for example, or whether you are going to use a head line, or lead line. A Yes, sir.

Q And you say you have wires aboard your ship on the tow. A Yes, sir.

Q Occasionally you may want a wire. A Yes, sir.

[421] Q When you are taking a ship into the dock, you give the instructions as to which lines are going to go over first or second, or what have you. A Yes, sir.

Q And you give the instructions as to whether a wire is to go over. A Yes, sir.

Q The same thing is done with respect — I mean, the pilot when he is docking the tow. A Yes, sir.

Q As a matter of fact, after you are tied up, do you go and look at the lines to see whether they are secure, or do you have the mate do that? A I have a mate to, if he is up.

Q If the mate is not there, do you do it yourself? Do you check the lines at all, or do you have somebody else check it for you? A Well, I have the lead deckhand on my watch, he always does that.

[638]

CODE W. GRANT

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was called as a witness by and on behalf of General Counsel for the National Labor Relations Board, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Nachman) By whom are you employed? A The Midwest Marine, Inc., of 120 South LaSalle Street, Chicago.

Q In what business are they engaged?

[639] A They are engaged in the tow boating business.

Q Are you employed aboard the tow boats? A I am.

Q In what capacity? A As master.

[665]

CROSS EXAMINATION

[669] Q (By Mr. Gore) On what occasion do you give instructions to your mate when you are on watch with respect to your Missouri Valley? A When the barges are alongside to be picked up.

Q But you never give any instructions then as to what lines to get over there, or to pull in the slack, or to use a spring line or a wire, if you are docking or picking up or letting go? A Sometimes you do it.

Q You do not do this with your mate on this vessel you are now operating on as master? A Yes, sir.

Q Under what circumstances, and on what occasions do you do that with your mate on this vessel, if you know, or if you remember? A Under what circumstances do I do that?

Q Yes. Do you give him instructions to get a certain line over, or a certain wire over, or to pull in the slack, or watch that cable? These are normal things aboard a vessel, aren't they? A Yes, that is right.

Q All right. Since you are controlling the vessel, you

to watch out about these things? This is your responsibility, isn't it? A Yes, sir, but I look at it a different way. The mate is out there to tell me, to direct me to hold it up. That is what I have him out there for.

Q I see now. Your mate then maintains authority over the master on your vessel? A Not authority. It is a matter of working together.

Q Well, is it the mate's responsibility to bring the vessel in safely? A No, sir.

Q Is it the mate's responsibility to bring the tows in safely? A No, sir.

Q All right. What you are really saying then is that you have a system whereby your mate gives you information as to the progress of the operation that you are involved in; isn't that correct? A We have a system where the mate is assisting and directing from out on the tow, what the pilot or the master can't see close enough, being farther away.

Q To give you signals and tell you what problems there are back there? A That is right.

Q But if it requires hard left, he doesn't tell you "hard left", does he? A Yes, sir.

[671] Q He does? A Yes, sir.

Q And does he tell you to back reverse? A Yes, sir.

Q He does? A Yes, sir.

Q Then, in your situation, the mate has responsibility over the master? A I wouldn't say it in those words.

Q How would you say it? A I would say he was assisting the man at the wheel.

Q All right. Is he then assisting you at the wheel the same way he assists the pilot when he is at the wheel? A Yes.

[676] Q (By Mr. Gore) The pilot, then, when he is on watch, subject to the over-all authority of the master, is expected and has the responsibility of doing whatever is necessary, under an

[677] emergency situation, to safely take care of the vessel, and the parts and the tows that he is entrusted with; isn't that true? A It is his responsibility and the mate's responsibility, both.

Q Yes. A Along those lines.

Q Yes, sir. A That is right.

Q That is right. Now, when you are going, or navigating in a heavy rain, do you ever have any crew members in the eyes, stand watch? A In the eyes —?

Q Let me withdraw that. Do you have any on the bow looking

out for floating items or dangerous items in order to help the safe navigation of the vessel? A We do not unless we are operating during the heaviest weather conditions, when you would keep a man on the head of the tow, yes.

Q You might keep a man on the head of the tow when the mate is not on watch? A Yes.

Q And, when you are operating your vessel under these circumstances, you give directions to this man in the head of the tow, don't you, from time to time? A The man on the head of the tow would be giving directions to me.

Q All right. By directions, again, we mean, or you mean, don't you, that he will be telling you what there is ahead, and how to avoid it? A Yes.

[686] Q (By Mr. Gore) Do you have any officers aboard your vessel; any persons called officers? A I call my mate an officer and the chief engineer is an officer.

Q Who else? A And the pilot.

Q They are officers, aren't they? A I call them officers, yes, sir.

Q What? A I call them officers.

Q Yes. A That is right.

[687] Q (By Mr. Gore) The difference between officers and crew members is that the officers are permitted to give orders and the crew members are not; is that correct? A That is right. Q What? A That is right.

Q As a matter of fact, this goes down to some very small things, doesn't it? For example, like getting coffee. A That is right.

Q The officer is permitted to tell the crew members, or a crew member to bring up a cup of coffee; is that right?

A That is right.

Q This includes not only the master but the pilot and the mate, as well; they have got a right to tell a crew member to bring them up a cup of coffee? A Yes, that is right.

[688] Q (By Mr. Gore) Your mate is technically on duty twenty-four hours a day; is that right?

A Technically, my mate is.

Q Yes. On all small vessels that you have been on, that is true? A Generally speaking, that is true.

Q Yes. While this is a technical thing, we know it can't operate that way actually, can it? A No.

Q So there are many times when he is not actively, actually actively on watch?

[689] A That is right.

Q When he is in the bunk? A That is right.

Q Maybe downstairs playing cards? A Could be.

Q And on those occasions when you are on watch, and something is needed to be done, you will call the nearest crew member to help you do something or tell them what to do; is that right? A Frankly, I have always detested giving an order to a deckhand myself even as master of the boat. Now, there are masters that vary from that procedure, but I much prefer to give the order to a mate.

Q Good. But you do have the authority to do that?

A Oh, yes.

Q And you might even just tell them to go below and tell the mate to come up? A I have done it numerous times.

Q And the pilot would be able to do the same thing, wouldn't he, under those circumstances? A Oh, yes.

Q That would be his authority? A That is right.

Q And if the pilot didn't have the same detestation in giving a direct order to a crew member if something needed to be done at the moment, he would have authority to give that order,

[690] wouldn't he? A Yes, sir, but we are in a position where these two men can't possibly ever leave the wheel; they have to be right there.

Q You are talking about the master and the pilot? A

That is right.

Q That is right. It is necessary for them to work

through others? A Yes, sir, that is right.

Q It is necessary to give orders to others or direct others to do things required to be done for the safety of the ship? A That is right.

but you said that isn't always the case, or something like that. What did you mean by that? A What I started to say was that you hire mates for the same reason that you hire pilots; men in those particular instances are supposed to know what to do and do their job right to start with. This is the way I understood the question, — it was a theoretical question, because, in doing the job, you have to do it right, so it is to everyone's advantage that it be done

right the first time, and be over with. In other words, you work together on the deal.

[1254]

IRVIN A. TAYLOR

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Nachman) ...

Q When you went to work for the Ingram Company, what job did you hold? A Well, when I first started I was a deckhand, sir.

Q Were you ever promoted from a deckhand to another

job? A Yes, sir.

Q What job promotion did you have? A From deckhand to second mate.

Q Do you remember how long ago it was you became second mate? A I believe it was about July 1957.

Q Did you belong to any union while you were deckhand? A Yes, sir.

Q What union?

[1255] A Masters, Mates and Pilots.

Q After you became a second mate, did your union affiliation change? A Yes, sir. I went from Local 3 to Local 28.

Q Did you receive a card showing your membership in Local 28? A Yes, sir.

BY MR. NACHMAN:

I wish to present at this time membership card from Lo-

cal 28 for I. A. Taylor for the year 1957 and the same for the year 1958 and wish to have these marked as Exhibit 15A and 15B.

TRIAL EXAMINER:

Very well, have the exhibits properly marked.

[1256] Q (By Mr. Nachman) Mr. Taylor, during the time you worked as second mate, what particular vessel or vessels of the Ingram Company did you work on? The Alice Ingram.

Q That was the only one you worked on? A At that

time I worked -

Q Let me make sure you understand my question. While you were a second mate did you work on more than one vessel? A Yes, sir.

Q During the time you worked as second mate what did the crew consist of? A Well, first mate, deckhand —

Q And, of course, a captain. A Of course, captain and pilot.

Q Was there a pilot? A Yes, sir and the crew in the engine room, the engineer and the assistant engineer.

Q You had a cook? A Yes, sir.

[1257] Q (By Mr. Nachman) How many deckhands did you have? A One, sir.

Q What hours did the deckhand work, what watch? A He was on forward watch. He worked six hours on and six hours off.

Q What do you mean by the forward watch? A Forward watch is the watch from 6 in the morning until

[1258] 12 noon and it goes on around like that.

Q Are there any other hours called a forward watch? A I don't think so.

- Q How about midnight to six in the morning? A That is the aft watch.
- Q How about from 6 in the evening until midnight, what is that called? A That is a forward watch.
 - Q That is also a forward watch? A Yes, sir.
- Q The deckhand worked the forward watch? A Yes, sir.
- Q What hours did you work? A I worked from midnight to six in the morning.
- Q Was the deckhand on duty at any time you were on duty —

MR. GORE:

I object, it is a leading question.

TRIAL EXAMINER:

Overruled.

Q (By Mr. Nachman) What is your answer? A No, sir.

[1259] Q (By Mr. Nachman) Mr. Taylor, what other people were on duty aboard the Alice Ingram at the time you were on duty? A Well, the first mate, if he was needed.

Q He was on duty at all times if needed? A Yes, sir.

Q Now, who else? A That was all. The deckhand was on the aft watch at the time.

Q Any body else on duty aboard the ship? A Not the deck crew.

[1260] Q Mr. Taylor, how long a period of time do you work? How many days in succession. A Approximately 30 to 40 days.

Q At the expiration of that tour of duty, 30 to 40 days, where do you go? A I go home on leave, sir.

Q You leave the ship? A Oh, sure.

Q Do you have a replacement? A Yes, sir.

Q During the time you worked on the Alice Ingram who was your replacement? A Max Brewer.

[1263]

CROSS EXAMINATION

Q (By Mr. Gore) . . .

[1275] Q When you were a deckhand, you were the only deckhand aboard the vessel you worked on? A No, sir, deckhand and tankerman, will you permit me to explain that. The tankerman and deckhand does the same work except a deckhand doesn't have a license to pump, load and unload. Otherwise, as far as making and changing a tow he does the same work as a tankerman does or the second mate, excluding loading and unloading of gasoline.

Q On the vessel when you were operating as a deckhand other

[1276] deckhands, other tankermen worked with you?

A Yes, sir. There was a deckhand and a first mate, just the three of us on board, 3 deck personnel.

Q Is this a relatively small boat? A Yes, sir it is.

Q How small? A I don't really know, it was a small boat.

Q Since 1957 and 1958 have you been working on the large boats? A When I came back to work after the strike I went to work on a large boat.

Q What was your position on this boat? A Tankerman and deckhand.

Q Tankerman and deckhand? A Together yes, sir.

Q Was this job on the Alice Ingram in the nature of a training program for you as a second mate? A I don't know what you mean.

Q Were you being trained as a second mate on the Alice Ingram? A Well, I hardly think so, the way I see it, if I hadn't been capable of doing that work I wouldn't have been advanced to a second mate.

Q I see, you work as a deckhand — A Deckhand and tankerman.

[1277] Q Why do you distinguish between them, a tankerman and a deckhand? A The same work except a deckhand doesn't load and unload the gasoline or discharge and load gasoline.

Q Do they get the same pay? How does the pay differ? A I believe the deckhand gets, you want me to state — I believe the deckhands get \$2.75 and a tankerman \$2.90.

Q What happens is the tankerman gets \$15.00 extra for unloading the oil? A We get paid additional to do that.

We get paid \$15.00 per barge for discharge and \$10.00 a barge for loading.

Q I see, the tankerman operates as a deckhand as well?

A Well, he does excluding the loading and unloading he also works as a deckhand.

Q While you were aboard the Alice Ingram as second mate did you ever tie up alongside? A Tie up alongside of what.

Q A dock? A Yes, sir.

Q Loading and unloading? A Yes, sir.

Q And you had no tankerman aboard? A Sure, I was the tankerman myself.

Q You did the unloading as a tankerman? A The first mate has license to unload and load gasoline
[1278] there were two of us licensed men.

Q I see. Now, when you became a second mate did anybody give you instructions from the company?

A No, not from the company.

Q Who gave you the instructions? A I tell you, sir, I wrote and told Mr. Eddie Adams that I was promoted to second mate. I was in Local 3 up until that time and so I was transferred from Local 3 to Local 28.

Q Now, as I understand you, you were a probationary member?

MR. NACHMAN:

May I suggest the witness may not be able to answer that question because of the form of that question.

TRIAL EXAMINER:

You believe that the witness does not understand the word "probationary". Lets find out whether he does or not.

Mr. Witness if you don't understand the question you may so indicate.

THE WITNESS:

I don't understand the question, sir.

Q (By Mr. Gore) Did you know that your membership was not a permanent membership in Local 28? A No sir, I didn't know it.

Q All right, now you said the first mate is on duty at all times? A Yes, sir, whenever he is needed.

Q Isn't the second mate on duty at all times when he is needed? A Well, now I will say it like this. When I was second mate

[1279] I went off duty after I had stood my six hour watch and if the first mate needed some help for something out there that happened to the tow naturally he would come and get me.

Q You were on duty all the time, were you not? A I don't think that it applies to me as it does the first mate.

Q Isn't it true every member of a crew is on duty at all times? They must answer a call when needed from the deckhand all the way up to the master? A If they are needed bad enough I guess so.

Q As a matter of fact, Mr. Witness, isn't it also true you and the mate actually stood watches six hours on and six hours off? A When we were loading or unloading if they came into locks it was close enough together we had to stay up, sir, we did. Otherwise —

Q Under normal circumstances? A — otherwise if the first mate was needed —

Q As a matter of fact under normal circumstances you were on six hours and off six hours and under normal cir-

cumstances he was on six hours and off six hours isn't that true? A Well, he was unless he was needed.

Q You were off six hours unless you were needed isn't

that true? A Yes, sir.

[1280] Q So, that with respect to who was on watch it was about the same thing with respect to you and the mate, isn't that true? A I guess so.

Q Mr. Witness, with respect to the deckhand did you have the authority to tell the deckhand what to do? A No. sir.

Q You didn't have the authority to tell the deckhand to put a line over? A If the first mate wasn't there I might have to tell him.

Q You had the right to do that? A I couldn't demand him to do certain things. Only if he was actually needed and the first mate wasn't present I would ask him.

Q What you are saying, you had the authority to do it but you didn't exercise your authority because it wasn't necessary on most occasions, isn't that right? A No, sir.

[1282] Q In your testimony a first mate can't give orders to a crew member, is that correct? A Sure a first mate can give orders to crew members.

Q Can the second mate give orders to the crew members? A No, sir.

[1283] A I will say in a case of emergency if the first mate was where he couldn't get out to give the order and this deckhand or crew member whatever he was

didn't know the second mate would advise him or something, I don't know he might tell him.

Q All right and couldn't the deckhand under any circumstances at any time might could tell the second mate what to do? A No, sir.

Q You sure about that? A Yes, sir.

[1284] Q (By Mr. Gore) Let me get this straightened out. Are you testifying Mr. Witness never when you were on watch was the deckhand on deck? A Well, he wasn't unless it was an emergency, he was supposed to be off watch.

[1287] Q Have you ever painted aboard the vessel?
A Pardon.

Q Who did the painting? A Well we all did, he did it when he was on watch.

Q Who is he, the first mate?

TRIAL EXAMINER:

I don't get that. The first mate did the painting?

THE WITNESS:

We all painted, sir.

[1289] A The mate sees that the galley is in clean order and stuff like that.

Q Who cleans the galley? A One of the deckhands.

Q The one deckhand cleans the galley? A He cleans the stove while on watch and whoever was running the other watch, as I was, would clean the hall and mop up before the cook comes on watch and also clean up the shower.

[1291] Q Do you remember anybody being stationed ahead of the tow in bad weather? A The first mate.

Q You were never at the head of the tow? A I wouldn't say I wasn't or was, that's the first mate's job.

Q And your job too, sometimes? A If anything happened that he couldn't get out there.

Q What you are testifying to is what is supposed to be done and not was done, isn't that true? A No, sir, the first mate was there.

Q You were never at the head of the tow on the Alice Ingram? A No, sir.

[1292] REDIRECT EXAMINATION

[1294] Q Who does that painting? A The mate instructs the painters as to where to paint.

Q Who actually does the painting? A The mate and myself, the deckhand on watch if he is not needed on the tow and when he is on watch he paints.

Q You say the mate does it too, does the mate actually do it? A He helps to do it, yes, sir.

Q Now, you also spoke, in your cross examination, of mopping up the galley. Who did that at the time you were on watch aboard the Alice Ingram? A Sir, I did my part of it. After watch I mopped the galley just before the cook came on watch, I mopped the base and the shower.

Q You did that yourself? A Yes, sir.

[1308] Q (By Mr. Carter) Mr. Taylor, was there any time when you received help from anyone else other than the mate? A No, sir.

[1313] REDIRECT EXAMINATION

Q (By Mr. Nachman) Mr. Taylor, in answer to Mr. Gore's question that you had in a question put to you by Mr. Carter stated that you and a deckhand were on different parts of the tow at the same time? A Yes, sir.

Q Did that ever happen on the Alice Ingram?

MR. GORE:

Objection. Mr. Taylor's testimony was that it happened on the Alice Ingram.

TRIAL EXAMINER:

Is this supposed to have been something that occurred while he was a second mate?

[1314] MR. GORE:

It is obvious couldn't have been any place since the testimony indicates the only vessel he served on while a second mate was the Alice Ingram.

MR. NACHMAN:

All I want to do is clarify to establish it on record.

TRIAL EXAMINER:

That has been established. Mr. Nachman, do you have any doubt as to which vessel it could have been on, according to the question asked by Mr. Gore?

MR. NACHMAN:

As a second mate aboard the Alice Ingram he was on a tow together with the deckhand that was the testimony, during the time he was serving aboard, the impression that the witness testified is that he and the deckhand were on the tow at different parts of the tow at the same time.

TRIAL EXAMINER:

You already have your answer. He said he so testified in answering Mr. Carter's question.

MR. NACHMAN:

That is correct, what I want to bring out from the witness is that it happened with another vessel not aboard the Alice Ingram.

TRIAL EXAMINER:

That he actually served on another vessel during the time he was second mate or some time before he became a second mate when he said that he had been out on the tow with a deckhand. I think that is the impression. Why don't you simply ask the witness whether there was an experience that he was referring to during the time he was a second mate or not.

[1315] MR. GORE:

I would object to that on the basis —

TRIAL EXAMINER:

As I told you many times that you refer to this type of examination as cross examination when it is not a cross examination.

Q (By Mr. Nachman) When you gave Mr. Carter that answer were you referring to the Alice Ingram or to some other vessel?

MR. GORE:

Object.

TRIAL EXAMINER:

You may answer that question.

THE WITNESS:

Sir, I was not, he asked me, if I worked on any other boat any time and referred to any deckhand.

Q (By Mr. Nachman) At the time you gave Mr. Carter that answer were you referring solely to the Alice Ingram or to another vessel? A No, sir.

Q A deckhand was not on watch at the time? A No, sir.

Q Suppose you were coming to dock to tie up could you

do that work by yourself? A No, sir, it is the first mate's duty to be there.

Q He would be there to help you tie up? A Yes, sir.

[1607] GEORGE D. HUTCHERSON

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Nachman) . . .

Q By whom are you employed? A Ingram Barge Company.

Q In what capacity? A Personnel Manager and Purchasing Agent.

Q Have you been Personnel Manager and Purchasing Agent for the entire seven years? A No sir, for only three, three years as Personnel Manager and Purchasing Agent and one year as Assistant.

Q Prior to that, the four preceding years? A I was mate aboard the Ingram Company's boats.

[1631] Q (By Mr. Carter) Mr. Hutcherson, first name the various towboats owned by the Ingram Barge Company? A The E. B. Ingram, Nelson Broadfoot, Alice Ingram, Arthur J. Dyer, Hortense B. Ingram and the tug J. A. O'Neal.

Q Let's take the E. B. Ingram, will you tell me what your complement is aboard that vessel? A Five men in

the deck department.

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Q Name those five men in the deck department? A By personal names or by classification.

TRIAL EXAMINER:

By classification.

THE WITNESS:

The classification in the deck department consists of mate, tankerman and deckhand.

Q (By Mr. Carter) All right, who else aboard the E. B. Ingram? A A pilot, two engineers, oiler, a cook and a cooks helper.

Q Now have you named everything in this instance which constitutes the normal complement aboard the E.

B. Ingram

[1632] by classification, Mr. Hutcherson? A To the best of my knowledge, yes, sir.

Q You mentioned three classifications in the deck crew, mate, tankerman and deckhand. How many deckhands normally does the crew carry? A Normally one on the boat.

Q How many tankermen? A Sometimes they have one, sometimes there are none.

Q How many mates? A Two or more.

Q All right, sir, now Mr. Hutcherson are there other boats of Ingram that you have already named that have a different make up as to their crew due to their size or some other peculiarity of the vessel? A We do.

Q Will you name any of those boats that vary very substantially from the E. B. Ingram? A The Alice In-

gram.

Q Take the Alice Ingram and point out the difference in your crew make up on the E. B. Ingram? A Normal

crew of the deck department is only three men.

Q Please state who those three are by classification? We are not interested in names, only classifications. A It would be the same as the larger boat, mate, tankerman or deckhand.

TRIAL EXAMINER: [1633]

How many of each would there be?

THE WITNESS:

It would vary there could be 3 of each, one of each or in some instances no deckhand.

TRIAL EXAMINER:

They could be sorted any way at all?

THE WITNESS:

That is correct.

Q Who is responsible for the safe navigation [1668] of the vessel and the safety of the crew at all times in your experiences with the company in the position which you have testified to this morning?

MR. GORE: Objection.

TRIAL EXAMINER:

Overruled. You may answer that question.

THE WITNESS:

The master of the vessel is responsible.

[1673] Q Now, Mr. Hutcherson, who hires and discharges the deckhands, tankermen and mates of Ingram Barge Company? A That is my responsibility.

Q Who does it? A I don't quite understand the ques-

tion sir, the person or persons involved.

Q Who hires if a mate, deckhand, tankerman is needed by the company, who hires him? A I am the one that hires.

Q If a discharge is to take place of a mate, a deckhand or a tankerman who discharges them? A I am the one that discharges them on recommendations from the master of the vessel.

[1675] Q Have you ever been informed by any official of the company as to whose duty it was to hire and discharge masters and pilots of the vessels? A I have.

Q Who informed you? A With reference to the book of instructions?

Q Aside from the book of instructions, Mr. Hutcherson, what official of the company informed you as to whose duty it was to hire or discharge masters and pilots?

MR. GORE:

Object to the leading nature of the question.

TRIAL EXAMINER:

Overruled.

Has any official given you such information?

THE WITNESS:

Yes, sir.

TRIAL EXAMINER:

Who was the official that gave you this information?

THE WITNESS:

Mr. R. E. Bridges.

Q (By Mr. Carter) Whom did he say had the authority to hire and fire masters and pilots? A Capt. Cioll.

Q What is his position?

[1676] A Port Captain of Ingram Barge Company.

[1692] Q (By Mr. Carter) Have you ever observed the master giving orders to the crew member to make up a tow during June 1957 and June 1958? A I have.

Q When he did that, will you tell us what happened?

MR. GORE:

This is again in the period specified?

MR. CARTER:

In the period specified.

Q (By Mr. Carter) When he did that, will you tell us

what happened? A He instructed -

Q Who instructed? A The master instructed the deck personnel to make up the tow and that is their line of work and they know their duties and they got out there and did the job.

Q In your observation in doing that job is there any

[1693] manual work required? A Yes, there is.

Q Who does the manual work? A All of the persons involved in making up the tow does the work.

Q Name those persons? A The mate, the tankerman and the deckhand.

Q In your observation does the mate do less or more?

MR. GORE:

Objection.

TRIAL EXAMINER:

State your reason.

MR. GORE:

It constitutes a conclusion of the witness not predicated upon any facts which are in the record with reference to what job each one does, what time, I don't see where it is relevant as to the proportion of work engaged in at specific times.

TRIAL EXAMINER:

Well, Mr. Gore, counsel seems to think it is relevant. I think that the witness can state on the basis of his actual observation. I assume this is the answer that is called for on the basis of actual observation whether one person worked as much with the hands as another person. This, of course, does not imply anything at all with respect to what the precise work was just calls for an answer with respect to manual work which means work with the hands. Is that not right, Mr. Carter, whether the man worked as much or less with the hands than the other members of

the deck crew?

MR. CARTER:

[1694]

That is correct, in his observation.

TRIAL EXAMINER:

Yes. You may answer the question,

THE WITNESS:

The mates do just as much work as all the other personnel. They work as a team every man works.

Q (By Mr. Carter) Mr. Hutcherson, describe some of the things you observed the mates do with their hands during the period June 1957 to June 1958? A Well, they pull on the wires, put them on the barges, pull on the lines, in fact, anything else that is needed. In other words, the mates job on there is just exactly like the rest of the men, if they don't work as a team the work won't be accomplished. I might add that a good mate he might do a little bit more work than the rest of them.

[1695] Q (By Mr. Carter) To your knowledge does the company have a policy with regard to any differentiation of wages of a missing crew member on the boat? A They do have.

Q Please state that policy?

MR. GORE:

Objection, foundation.

TRIAL EXAMINER:

Overruled. Are you familiar with that policy?

THE WITNESS:

Yes, sir, I am.

TRIAL EXAMINER:

And the question is what is that policy?

THE WITNESS:

The policy of the company is that they divide the wages up of the missing man among the other persons doing the work.

Q (By Mr. Carter) Does the mate participate in that dividing?

MR. GORE:

Objection, irrelevant.

[1696] TRIAL EXAMINER:

Overruled.

THE WITNESS:

He does, sir.

- Q (By Mr. Carter) Does the company have any policy for the payment of pumping the barges? A Yes, sir, they do.
- Q Are you familiar with that policy? A Yes, I am.
- Q Will you please state what that policy is? A The men that actually do the pumping of the barges which are licensed tankermen receive pay for loading and unloading the barges.

Q All right, do the mates share in this compensation?

MR. GORE:

Objection, leading.

MR. CARTER:

I will strike it.

Q (By Mr. Carter) Who shares in this compensation?

A The men actually doing the work which would be mates and tankermen.

CROSS EXAMINATION

Q (By Mr. Gore) . . .

[1743] Q It is not your testimony the only instructions under which your captain operates is the book of instructions? A That is the only available source unless he gets notice from me by telephone.

Q Mr. Witness, to get the record clear, you are really saying is that the only formal written instructions in one

place under which a captain operates refers now to General Counsel's Exhibit 21, the book of instructions. He really operates under many more instructions than that isn't that true. A I suppose it is sir. He operates under telephone instructions.

[1744] Q He operates under instructions in wires? A Yes, sir.

Q He operates under instructions in bulletins? A Yes, sir.

Q So, then, the book of instructions is not the only instructions under which he operates, that is clear now, isn't it? A That is clear.

Q And from time to time he operates under instructions by wire or by telephone which countermands the instructions in the book of instructions? A I couldn't say about that sir, I just couldn't say.

Q The master also operates under a contract or did between June 1957 and June 1958?

MR. NACHMAN:

What kind of contract?

TRIAL EXAMINER:

Let the record show the type of contract.

MR. GORE:

Under contract between Local 13 and the company.

Q (By Mr. Gore) Mr. Witness, with respect to the contract, wherever the instructions in General Counsel's Exhibit 21 conflicted with the contract, the contract took precedent, did it not? A That is correct.

[1834] RUBIN NICHOLAS CIOLL

a witness called by and on behalf of the General Counsel, after first being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Nachman) . . .

Q And with what company are you connected? A Ingram Barge Company.

Q In what capacity? A Port Captain.

Q As port captain what are your duties? A To hire and fire, if necessary, the masters and pilots; to see that the masters operate the Ingram Barge Company boats as the company desires them to be operated with respect to cleanliness and the supervision of the crews, etc.

[1934] Q (By Mr. Nachman) Now, Mr. Cioll, I believe you told us on yesterday that you supervised the masters and the pilots aboard the Ingram Vessels hired and supervised them. A I hired and supervised the masters and pilots aboard the Ingram vessels.

[1973] Q (By Mr. Nachman) And who handles, if anyone, or does anyone handle the matter of promotions or demotions of crew members aboard the ves-

sel. A No one aboard the vessel handles the promotions or demotions.

Q And where does such action emanate from? A For engine room personnel, such action emanates from the port engineer. For the masters and pilots, for myself, and for the rest of the personnel, from Mr. George Hutcherson.

[1974] Q (By Mr. Nachman) Who has the authority to discipline any member of the crew. A The master is the only person aboard that has the authority to discipline any member of the crew except, well, the master and chief engineer.

Q And the chief engineer's authority, is it limited to any particular area? A It is limited to the engine room personnel.

Q And other than the engine room personnel, I take it your answer would be the master. A That's right.

Q Who aboard the vessel is charged with seeing that the crew properly performs their duties?

[1975] A The master and the chief engineer.

Q And again, I take it, that the chief engineer is limited to a specific area. A To the engine room personnel.

Q Does anyone aboard the vessel have the authority to adjust grievances of the boat's personnel? A Any grievances should be first handled with the master.

Q Does anyone else aboard the vessel have such authority? A No.

Q Does anyone aboard the vessel have the authority to reward any employee? A No, none other than the per-

sonnel's reward, by the, well, they have no authority to reward.

Q Does anyone aboard the vessel have the authority to lay off or recall an employee?

MR. GORE:

Objection, already testified to.

TRIAL EXAMINER:

Let the answer be given again.

THE WITNESS:

The master has the authority to lay off, and by recall, I assume you mean —

TRIAL EXAMINER:

To recall back to employment, that is what the term means.

THE WITNESS:

If the man has been laid off, then the master does not have the authority to recall.

Q (By Mr. Nachman) Does anyone else aboard the vessel have such authority?

A No. [1976]

Q Under what circumstances would a master have the authority to lay off?

MR. GORE:

Objection. There is no foundation that there are any special circumstances. He has testified that he generally has the authority to lay off.

TRIAL EXAMINER:

And furthermore, again, I might ask you, since there is no contention in the case that the master is not a supervisor, why be concerned about what the master's authority is.

Q (By Mr. Nachman) Does any other person aboard the vessel have authority to lay off or recall an employee, or to lay off an employee, it should be. A No.

Q Does anyone aboard the vessel have authority to promote an employee? A No.

ever observed a situation where a pilot while on watch and preparing to negotiate a lock and the pilot was on duty, whether or not the pilot conferred with any member or members of the crew?

MR. GORE:

I object, Mr. Examiner.

TRIAL EXAMINER:

Mr. Cioll, have you ever been on deck while the pilot was taking a boat and barges through a set of locks.

THE WITNESS:

Yes.

TRIAL EXAMINER:

Now, have you seen what the pilot did and to whom he spoke in these circumstances.

THE WITNESS:

Yes.

TRIAL EXAMINER:

To whom did he speak and what did he do.

THE WITNESS:

On these occasions, which are not common — they are not uncommon, but they are not common -

MR. GORE:

Move to strike that, Mr. Examiner, whether these occasions are common or uncommon is totally unresponsive and unnecessary and voluntary.

TRIAL EXAMINER:

This will not hurt the record. Let the record stand. Go on.

THE WITNESS:

The pilot may, I have seen the pilot confer with a deckhand or two deckhands or with three deckhands and the mate and he would tell them that "I expect when I get down to this lock to have the wind blowing off shore pretty strongly so in order to get into the lock I may need some help with some lines." That's it.

TRIAL EXAMINER:

Is that all you have heard him say in these circumstances, nothing more, nothing less, is that it.

THE WITNESS:

That's about it.

[1999] Q Now, is there any signalling between the pilot and the crew? A I have seen the crew give the pilot signals when they were entering or leaving the lock.

Q Signals with respect to what? A Well, to normally coming into the lock they would have one crew member on each bow corner of the tow and normally the lock walls are staggered and as they would pass the longer wall, the end of the longer wall, the crew member that was standing on that side of the tow would give him a signal by waving his arms, one arm up and down alongside him that would indicate that the head of his tow had passed that point and when the head of the tow had passed the shorter wall, the man on the other side would give him a signal likewise. If it appeared that he was going to hit the thing, well, he might signal to the pilot that he was getting too close and was liable to hit it by turning around and running or he might have the nerve to stand there and wave to go back.

Q Now, these are signals from the crew to the pilot? A From the crew to the pilot.

[2000] Q Have you observed any signals from the pilot to the crew? A Yes.

Q And what kind of signals would they be? A Well, when as I said before, when they were getting ready to leave a lock, the tow would be tied off, and made up and it is the customary practice for the pilot to watch, or the master, if it may be the master on watch, the deckhand would give him a signal that we are ready to go, the tow is made up safe enough to proceed out from the lock or from the landing, and the pilot, they wouldn't just turn the thing loose, because while they are making the coupling the pilot may have to run downstairs to the bathroom, so

he gives the signal that the tow is made up and he waits for a signal from the pilot house.

Normally, it is one short blast of the whistle to signal that he is ready and in condition. He is in the pilot house ready to go to work and turn her loose.

Q So then he has signalled the deck crew that he is ready to proceed. A He is ready to proceed.

Q And then does he proceed? A He should, yes.

Q Now, with respect to the tying on or tying off of barges, have you observed that function being performed or either of those functions being performed while a pilot is on watch. A I have.

Q And what have you observed as to the [2001] manner in which that is done? A With reference to the pilot, he just usually, normally, it is at a dock, well it would be at a dock or a float or alongside the banks somewhere, in which case the crew members would be there. If it were a dock or a float they would be talking to the float or the dock man. If they would be tying it off in the woods they would be looking for a nice tree to tie it to, where they wouldn't have to drag the cable so far and the pilot would maneuver in close enough that the crew could find out where they wanted the barge and they would signal or tell the pilot - I have forgotten to mention, we do have, most of our boats have intercommunication systems and they have a speaker on the head of the tow. He would tell the pilot the dock man wants the barge tied off at the head of the dock and you are going to have to come well, I say you are going to have to, we need to shove up about three hundred feet and so the pilot shoves up about three hundred feet and puts her alongside the dock and they tie her off.

When they get ready to cut loose from the barge they

have dropped the procedure for cutting loose is, before they cut loose anytime they are moored to something solid they usually check with signals or by voice, are you ready to go, and does he want to stay there a minute while he runs downstairs

[2002] or write up or makes an entry in his log. Now, that is an assumption. I don't guess I should say that but by signal they will tell them that they are ready to go and he says I am ready so they turn her loose.

Q And would the reverse of that procedure, would it be fair to say that the reverse of that procedure would fairly exemplify the method of tying on a barge when you are ready to pull away from a dock? A About the same procedure.

CROSS EXAMINATION

[2053] TRIAL EXAMINER:

This is cross examination and perhaps it will be revealed through cross examination.

[2065] Q (By Mr. Gore) All right. Mr. Witness, aboard a tugboat who is the boss? A The master.

Q He is the general boss isn't he? A He is the general boss.

Q He has the ultimate responsibility for everything?

A That is, well, with the exception of the operations of the engine. He is not expected to be a mechanic or an engineer.

Q Yet he still maintains the ultimate responsibility even for those, doesn't he? Isn't he supposed to see that the chief engineer properly looks after the engines? A Not

necessarily.

Q You don't think so. A He is supposed to see that the engineer keeps his engine room in such an order as to not create a fire hazard or a safety hazard, but aside from that, the operations of the engine and the maintenance of the engine are the engineers responsibility.

Q In other words, what you are really saying is that

the

[2066] engineer has direct responsibility for the engine room. A That is correct.

Q But he still must report to the captain, mustn't he? A Report what.

Q Well, doesn't he have to report to the captain that the engines are in good order? A That is correct.

Q So that ultimately, the safe conduct of the vessel is the responsibility of the captain. A That is correct.

Q And the maintenance of the engine is a part of the safe conduct of the vessel, isn't it? A That is correct.

Q It will be impossible to maintain the vessel's safety when you have a defective engine, isn't that true? A That is true.

Q All right now so that the real boss then is the captain over everyone, right? A Right.

Q And there are lots of jobs aboard a ship, aren't there? A Aboard a ship, I am not familiar with the jobs aboard a ship. You are referring —

Q Lots of jobs aboard a tug. A There are several.

Q And you don't expect the captain to personally see that

[2067] every job is done himself, do you? A We hold the captain responsible to see that —

Q That is now what I asked you Mr. Witness. I asked you if it is anticipated that the captain will personally see that every job is done. A It is anticipated that he will see that each job is done.

Q That he will personally see that each job is done. A Personally? Yes.

Q Yes, then it is your testimony that he will personally direct the personnel to do each job and to watch over them to see that it is done personally. A He won't have to watch over them. He will tell them the jobs he wants them to do and then get himself a few hours sleep, and when he gets up if he finds the job hasn't been properly performed, well then, he can always check their work after it has been done or he will hear about it.

Q What do you mean he will hear about it? A Well, if a deckhand comes into the galley right at meal time and knocks the coffee pot over I am sure the cook or the mess boy that has to clean it up is going to have something to say to the captain about it the next time he sees him.

Q That is what you mean by ordinarily he will hear about it. A Yes, sir.

Q With respect to the engines, you don't expect

[2068] personally to see that the engines are taken care of? A No. I explained before that the engineer is responsible for the operation of the engines.

Q But, you expect him personally to see that all the

equipment in the deck department is taken care of. A Yes.

Q Personally to see to it? A To see that it is properly maintained, yes.

Q It is his personal responsibility? A Yes.

Q And then he personally according to your testimony, directs each employee aboard the vessel with respect to what their job is to do with respect to the taking care of the deck department. A When it is necessary.

Q When it is necessary he does. He personally tells a deckhand what his job is, that a master personally tells a deckhand what his job is. When is that necessary? A Well, if a deckhand had any experience, then you don't have to go into any great detail in telling him what his job is, and they normally get their experience pretty fast by association with other deckhands. It is a rare occasion that we ever put a complete green crew aboard a boat.

[2085] Q All right. Mr. Witness, when a master is on watch or let me put it this way, when a master was on watch in 1957 to 1958 when you were aboard your vessels as Port Captain, what did he do? A When he was on watch.

Q Yes. A Well, when I was aboard the boat quite often I would steer for him and give him a chance to make an inspection of his boat and spend a little more time looking around and quite often I would do that. I don't know what he was doing while I was steering the boat for him.

He normally would steer the boat during his watch and quite often in most cases they

[2086] have one or two men aboard the boat that can hold the boat from time to time in straight stretches and he would use that time to keep up with his reports and so forth or wait until they got off. We were talking about while he was on watch?

Q Yes, when he is on watch, what did he do when he was pulling alongside when he was on watch? A Pulling alongside, what do you mean pulling alongside, where or what for instance?

Q Okay, pulling alongside a dock. What does he do? A What does he do?

Q Yes. A He handles the boat and maneuvers it in position. If he is just going to stop there for a minute, he adjusts and maneuvers the boat into shape with the help of the mate and the tankerman or the mate and the deckhands and lands there that's all.

Q Okay. When he ties alongside, he just maneuvers the boat and says nothing? A No, in some cases we have, most of our boats we have the P. A. system between the head of the tow and the pilot house and he will ask the mate or deckhand or tankerman whoever may be near him the speaker how far he is, how far away and he will tell him or how much headway have I got or how much further

do we need to shop up and such conversations as that.

Q Does he ever say, "get that first line over", or say it like this, "get that first line over, goddamn it" or something to that effect? A In an emergency. I never observed this. I didn't observe any of this happening between 1957 and one year prior to July 1, but I have seen

it happen in the past and if the boat was broke down or something there is a whole lot of yelling going on.

[2102] Q All right, who are the deck officers aboard Ingram barges? A The deck officers.

Q Yes. A Well lets see. The deck officers would be the master, I am not sure exactly what you mean by officer.

Q I am asking you a question. Who are the deck officers and I am using the plural, Mr. Witness, aboard the Ingram barges.

MR. NACHMAN:

Mr. Examiner, the witness has stated he doesn't understand what is meant by the term officers.

TRIAL EXAMINER:

That has been the statement of the witness.

Q (By Mr. Gore) All right, Mr. Witness, were you at all a port captain or a master on an Ingram barge when there was

[2103] a contract in effect, a written contract in effect?

A I was.

Q Between Local 28 and Ingram Barge Company? A Yes sir.

Q And you were port captain at least during part of that time. A Yes sir.

Q And as port captain during part of that time with respect to masters and pilots, you had to conform with the provisions of that agreement. A Yes sir. Q And thereby you read that agreement. A Yes sir.

Q And you applied it. A Yes sir.

Q You thought you understood it. A Yes I thought I understood it.

Q Well, do you recall the term deck officers in that

agreement? A I don't recall that term.

Q Okay. Trying to refresh your recollection, Mr. Witness, do you recall in that agreement the following language appears, "accumulated time off. In addition to the above wages deck officers will be allowed leave days with pay in accordance with the following schedule."

[2104] A I recall reading. Could you read that again?

Q Gladly. "Accumulated time off. In addition to the above wages deck officers will be allowed leave days with pay in accordance with the following schedule," and then a schedule follows. Do you recall that? A I don't recall any schedule.

Q Okay. Following schedules, I then continue, "effective March 16, 1956, three-quarter day off for each day

worked with pay". A I recall that.

Q And was this applied to any personnel aboard the Ingram barges by virtue of this agreement, the agreement between Local 28 and the company? A It was yes.

Q And to whom was it applied? A To the deck of-

ficers referred to in the contract.

Q And who were they? A The masters, pilots, mates, several mates classifications, mates, second mates, licensed second mates, unlicensed and I am not sure, but I believe there was a relief mate in there also.

Q All right. In other words, it referred to the masters, pilots and mates? A And all the mates yes.

Q All right, and there are other points in that agreement

or places in that agreement where the term deck officers is used, isn't that correct as far as your recollection goes? A As far as my recollection, there were other terms, the term deck officers was used.

Q And in each case it was being used in reference to the same classifications, is that correct? A That is correct.

Q And it was so applied, is that not correct? A That is correct.

Q Now, is that a term which also appears in the instruction book or book of instructions? A Deck officers.

Q Yes. A I don't believe the term deck officers appears. I believe the word officers appear.

Q And when the term officers appears in the book of instructions to whom does that term refer if you know? A It refers to the master and the chief engineer.

Q And how do you know that, by virtue of what publication is that spelled out? A I don't know of any publication where that is spelled out.

Q Well, aside from that, how otherwise would you know? A Well, this particular book of instructions, there were two assigned to each boat, and one was in the possession of

[2106] the master and one the chief engineer and all correspondence between the company and the boats were normally directed to the master or chief engineer. There has been correspondence that was direct to an individual employee, and I do recall a couple of memos that were addressed to officers and crews, but whenever I refer to an officer I think of someone that has a responsibility and it is the master and chief engineer.

Q All right I see. Now, what you are telling us is it is your own personal conclusion as to what the word officers mean in the book of instructions, is that correct? A Correct.

[2162] Q Mr. Witness, with respect to a situation where the master is by some reason totally incapacitated or leaves the vessel and the company has not yet had an opportunity to appoint anyone and does not yet know that the vessel does not have a master, is any one in charge of that vessel? Is any one responsible for the safe navigation and the seaworthiness of the vessel as the master was when he was aboard or in charge? A As far as I know there is nothing that states a certain person will take his place.

Q I am asking you now if there is any one — I am not asking you if there is anything that states — you have testified

[2163] rather fully, Mr. Witness, about a good number of the things aboard your vessel and a good number of the things that you expect of your masters, mates, pilots and crew come from the traditions and the customs of the sea or the river. A Right.

Q You mean to tell me that you know nothing about the tradition and customs of the river that tell you or that leads you to expect or require who takes over when the captain is incapacitated or is no longer available aboard a vessel. A When the captain is no longer available aboard the vessel the tradition would be that the pilot would take over, the tradition with the Ingram Barge Company.

and the pilot — the master has confidence in his pilot he wouldn't leave less or maybe no instructions. A He would leave certain instructions pertaining to — I believed I testified something to the fact — he would leave instructions as to the way to make up the tow, where to drop it off, where to drop off barges and where to pick them up and so forth and what procedure to take and in most cases you wouldn't find except in rare occasions that the master would not leave any instructions at all pertaining to these matters of navigation.

Q All right. Now, let us understand what we are talking

[2218] about, when we say instructions. The master would necessarily leave a note of some kind saying that we have to pick up two barges at the Texas Company. This he would do would he not in any event — at six o'clock say or at seven o'clock. This he would have to do. Is that correct? A You mean leave a note.

Q Yes. A Not necessarily. If they had two barges at the Texas Company and they thought the picking up of these barges might occur during the pilots watch he would probably scribble on a piece of paper the number of the two barges so we could identify them and wouldn't trust it to the pilot's memory and tell him just put both of them on the right side of the tow because we are going to drop them at —

Q All right. It might be something on that order. In fact he might not tell him which side of the tow to put them, isn't that correct? A He may not but in most cases he would.

Q I see. He would not tell him how to pick them up, the manner in which that is to be done, would he? A By that you mean the way to handle the boat while in the process.

- Q Yes. A No. He wouldn't, he probably wouldn't.
- Q He would not tell the pilot what lines to use or what

[2219] lines not to use in coming alongside, directing him how to come along side, would he? A He wouldn't be apt to. That wouldn't be the normal procedure.

Q He would tell him generally what the job is to be done and expect the pilot to get it done, isn't that correct? A Yes.

REDIRECT EXAMINATION

Q (By Mr. Carter) Mr. Cioll, in connection with the giving of directions on Ingram Vessels do mates ever give directions to other mates? A You mean handling lines and so forth.

Q Yes, in the every day operation of the vessel. A In the every day routine in the operations of the vessel they quite often give directions to other mates.

Q Would you give us one or two examples that comes to your mind readily of that occurrence. A Well, on all of the boats we carry two mates and the watch schedule that we have the usual watch schedule you will find both mates are on watch at the same time and one of them acts as another deckhand even though he has the title

[2220] of mate or second mate —

Q (By Mr. Carter) Mr. Cioll, are there ever [2223] any instances aboard the company vessels where you have no persons working as members of the deck crew in the classification of deckhand?

MR. GORE:

I object to the question, as being totally irrelevant.

TRIAL EXAMINER:

Overruled.

THE WITNESS:

Classified as deckhand, I am not positive in the past I believe there have been several occasions where that happened.

Q All right. In instances where that has oc-[2224] curred, to your knowledge, could mates give directions to other mates. In those instances where this occurs what is your deck crew made up of?

MR. GORE:

Objection.

TRIAL EXAMINER:

Overruled.

THE WITNESS:

In places where that has occurred we have two different crews. One boat carries quite often as the Alice Ingram carries a deck crew consisting of a mate, a second mate and a tankerman, the only three men in the deck crew. On the boat with the five men deck crews there were several instances in the past where we had 3 mates, a tankerman and a deck and on one occasion we had four mates, various types of mates and a tankerman.

[2226] Q In those instances, what happens? Do the mates sometimes give instructions or directions to the deckhand who might be at the other end of the mate?

TRIAL EXAMINER:

Who is the mate you are talking about?

MR. CARTER:

Any mate, first or second mate.

THE WITNESS:

It's pretty hard to give directions when you are a hundred feet away from another person. Of course, on the tow you are sometimes four or five hundred feet apart and completely out of sight of each other.

Q (By Mr. Carter) Let's assume — let me ask you this — anytime when they are working together on something they are close enough that one man will be giving directions to the other man. A Yes, sir, there are times when that happens.

[2227] Q On those occasions to your knowledge do deckhands ever give directions to mates? A Yes, sir. I have heard deckhands give directions to mates. Q Mates give directions to deckhands, is that correct?

MR. GORE:

Mr. Examiner, I move to strike all of the answers until

such time as we understand what the witness and Mr. Carter understands by the term directions.

MR. CARTER:

I want to ask that now.

Q (By Mr. Carter) Would you give us an example of the kind of direction a mate gives to a deckhand or a deckhand to a mate? A Let's say you got a strong wind which is not too unusual or uncommon and you are coming down the river with an empty barge and you are coming into this lock and you have to put out lines to help the pilot or master get into the locks safely and you have a couple of lines out and the deckhand or the mate either one, one of the lines they were using started going into the river he would holler to the other man, "grab that line".

Q All right. Now, can you give any further examples of the kind of directions that might be given by a deckhand to a mate or by a mate to a deckhand? A Well, they could be painting the side of the boat or something and

either one of the two could tell the other

look if you take and wrap a rag around your T22281 paint brush you won't get that paint all over you or if you'll get that brush on the other side of that brush you'll be able to cut in that line better, you will have the wind off you.

Q Since you brought up about painting, where there is painting to be done, do the mates engage in the actual job of painting? A They do, yes, sir.

Q The deckhands also engage in painting when there is painting to be done? A Yes, sir.

[2229] Q (By Mr. Carter) Will you answer the question. A Repeat it please.

TRIAL EXAMINER:

He wants to know whether the mate paints as much or less than the deckhands when they are both engaged in painting.

THE WITNESS:

Ordinarily they work pretty close together. It all depends on who is the best painter. They would paint about the same amount, I would say.

Q (By Mr. Carter) All right. Now, Mr. Cioll, there's been some testimony in your cross examination about licensed and unlicensed people. Does a person with a license on one

[2230] of your boats have any different status than a person without a license in any particular job, whether it is a mate or a pilot or whoever it might be. A Mate, pilot, engineer, masters, all get certain extra compensation for their licenses.

Q Other than the bonus or extra compensation which is given by the company for obtaining the license is there any other difference in their status; that is to clarify the question for you — if you have a first mate who has a license and you have a first mate who does not have a license is there any difference between the two as far as the company is concerned; other than this bonus.

TRIAL EXAMINER:

Let me ask you this question first. Excuse me, Mr. Carter. Is there any legal obligation that anybody on your vessel has a license.

THE WITNESS:

Yes, sir.

TRIAL EXAMINER:

According to law who on your vessel must have a license?

THE WITNESS:

According to the license — according to the law just about anyone of the people on the vessel must have a license that would be a tankerman license.

TRIAL EXAMINER:

I don't get that answer, say that again.

THE WITNESS:

Well -

[2231] TRIAL EXAMINER:

I ask you who must have a license.

THE WITNESS:

The master would not be required to have a license, the pilots according to law but there should be one man aboard with a tankerman license.

TRIAL EXAMINER:

The law requires that one man should be on board the vessel who has a tankerman's license, is that your answer.

THE WITNESS:

That's right.

TRIAL EXAMINER:

The law doesn't require that anybody else should have a license is that your answer?

THE WITNESS:

That is my answer yes.

TRIAL EXAMINER:

Does the Ingram Barge Company require anybody outside of the tankerman in compliance with law to have a license.

THE WITNESS:

We don't require them to have a license.

TRIAL EXAMINER:

Very well, that is the answer to my question. Your company does not require anybody to have a license except there must be one tankerman aboard the vessel who must according to law have a license, is that your answer.

THE WITNESS:

That is my answer.

TRIAL EXAMINER:

Very well, continue with your examination, Mr. Carter.

Q (By Mr. Carter) Mr. Cioll, let us suppose that a deckhand requests a mate to help the deckhand with a line, and

[2232] the mate refuses to help him with the line, is the mate subject to reprimand? A I doubt it on that particular item.

Q Is there any instance that you know of of your own

knowledge from your observation and experience where a request by a deckhand or an instruction or direction by a deckhand to mate which is refused by the mate would bring about a reprimand? A I believe I can think of such an instance.

Q Would you please state it? A If he was required to move a heavy object such as a coil of lines that is still in the package, and the deckhand asks the mate if he would help him move it and he refused I am sure, probably the deckhand would report this to the master and the mate probably would be reprimanded.

RECROSS EXAMINATION

[2233] Q (By Mr. Gore) These are different people that you are talking about, isn't it? A Sir.

Q These are different people that you are talking about?

[2234] A Different instances?

Q Yes. A They were different instances.

Q The same men were not involved in each separate instance? A Some of them may have been involved in a couple instances. We only had four boats that this occurred on so, changes are it happened to the same men two or three times.

Q You are not really sure? A Of that.

Q Yes, that it happened to the same men two or three times? A It may have happened and yet it may not have happened to some of the mates at all.

Q Yes. Now with respect to any one man, any one mate, what proportion of the time that he worked for your company for the period of the year did he work on a vessel that had four mates and one tankerman? A This particular thing only happened one time. I don't recall what period — I do recall there were four mates because it just gripped the devil out of me —

Q It was unusual. A Yes.

Q In that case for the four mates aboard that vessel at that time it was a negligible time or negligible proportion of this time they spent in this kind of situation? A Yes.

[2235] Q All right. With respect to the situation where you have three mates, a tankerman and a deckhand; with respect to anyone of those mates who worked under those circumstances what proportion of his time was spent working with three mates, a tankerman and a deckhand? A I don't know the specific number of days that any one man worked under those conditions; it varied from 3 or 4 days to as much as 15 days.

Q You know that no one man spent a major proportion or the majority of his time working on a vessel with three mates, a tankerman and a deckhand for a period of a year. A No.

Q All right. Now, with respect to the Alice Ingram, this is another boat all on its own, is that right? A It belongs to the company.

Q It is different from the other boats? A Yes.

Q It's the smallest one you got? A Yes.

Q Now you say that you have on that boat a mate, a second mate and a tankerman? A That is what we carry, yes.

knowledge from your observation and experience where a request by a deckhand or an instruction or direction by a deckhand to mate which is refused by the mate would bring about a reprimand? A I believe I can think of such an instance.

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Q Yes. Now with respect to any one man, any one mate, what proportion of the time that he worked for your company for the period of the year did he work on a vessel that had four mates and one tankerman? A This particular thing only happened one time. I don't recall what period — I do recall there were four mates because it just gripped the devil out of me —

Q It was unusual. A Yes.

Q In that case for the four mates aboard that vessel at that time it was a negligible time or negligible proportion of this time they spent in this kind of situation? A Yes.

[2235] Q All right. With respect to the situation where you have three mates, a tankerman and a deckhand; with respect to anyone of those mates who worked under those circumstances what proportion of his time was spent working with three mates, a tankerman and a deckhand? A I don't know the specific number of days that any one man worked under those conditions; it varied from 3 or 4 days to as much as 15 days.

Q You know that no one man spent a major proportion or the majority of his time working on a vessel with three mates, a tankerman and a deckhand for a period of a year. A No.

Q All right. Now, with respect to the Alice Ingram, this is another boat all on its own, is that right? A It belongs to the company.

Q It is different from the other boats? A Yes.

Q It's the smallest one you got? A Yes.

Q Now you say that you have on that boat a mate, a second mate and a tankerman? A That is what we carry, yes.

[2237] Q So then, you might have a mate, a second mate and a deckhand with one of the mates being a tankerman or having a tankerman's license. That is true isn't it? A That's true.

[2238] Q Now, with respect to the mates and second mates aboard the Alice B. Ingram who were they who worked from June 1957 to June 1958? A Who were they? I don't recall who they were.

Q Well they were not the same people throughout the year were they? A No, they would rotate throughout the entire company, among themselves.

Q They do not work consistently — it is not your testimony that the same mate and second mate work consistently aboard the Alice B. Ingram isn't that true? A That is true.

Q They may well have worked and they did work aboard other vessels during the period of the year? A They may have but I am sure, what we try to do is to assign certain people to certain boats, the boats might be operating in a particular geographical location and we try to put people on the boat that live near the operation.

Q I understand. You have thirty days on and thirty days off and they might have gone to another vessel, isn't that true? A They may have. Most of the time they would return to the same boat.

Q I am talking specifically about the Alice B. Ingram. A I am, too.

Q And it is not your testimony that the same two — now, it is now your testimony and you changed it that on the Alice Ingram they worked mostly aboard the Alice Ingram for a

[2239] year the same two people. A I don't recall saying the same two people.

Q Okay, then it is not your testimony that the same two people worked aboard the boat for a period of a year. A I don't believe it is.

Q (By Mr. Gore) One thing I want to know. Can a deckhand issue an order to a mate? A You mean by an order give him instructions that must be carried out.

Q Yes. A No.

Q That makes no difference how they work isn't that true? He cannot do this. A That is true.

[2240] Q This is against the uses, the traditions and customs of the river, isn't it? A Against the conditions, uses — it is not against the uses and traditions and customs of the Ingram Barge Company but it is of the river.

Q You don't have a tradition or custom of Ingram Barge that permits a deckhand to give orders to a mate do you? A No.

[2243] Q (By Mr. Gore) And we get back, Mr. Witness, is a mate an officer aboard your vessel under the documents and publications including the contract which was in effect in 1957 and 1958.

THE WITNESS:

The mate would be considered an officer.

Q (By Mr. Gore) Then, what is meant then by the au-

thority and legal responsibility of all officers is fully recognized that their orders shall be obeyed.

[2255] R. E. BRIDGES

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Nachman) Will you state for the record your name, please? A R. E. Bridges.

Q What firm are you connected with? A The Ingram

Barge Company.

Q How long have you been connected with the Ingram Barge Company? A Since 1952.

[2256] Q In what capacity? A Vice President and General Office Manager.

Q Has that been your position since 1952? A Yes.

[2310] MR. GORE:

I said on the record that Local 28 admits to representing some persons in the classification of second mates.

[2338] Q (By Mr. Nachman) Mr. Bridges, you told us that you have since 1930 had connections with certain firms engaged in operations on the inland waterways, is that correct? A That is correct.

Q In what capacity did you serve during that period? Did you go aboard the tow boats and barges operated by

those companies?

Q Have you personally gone to sea at any time? A Yes, sir.

[2339] Q When was that? A From 1905 up until 1916, I believe.

[2359] Q (By Mr. Nachman) Mr. Bridges, based on your position with the Ingram Company your responsibilities therewith as you have outlined them, your knowledge of the river as you have outlined it and your experience and observation aboard the towboats and your contact with the crew and the personnel as you have outlined and your general experience including the questions propounded to you by the Trial Examiner, can you state the duties and responsibilities of a master aboard the Ingram towboat? A I believe so.

Q Will you tell us please what they are? A The master is in charge of his boat. He is responsible for the safe navigation of that boat and tow up and down the river. He is responsible to load and unload the barges at various terminals, responsible for the discipline and proper

function of his crew. He is responsible to maintain his boat and barges to the extent of the ability of the crew.

[2361] Q (By Mr. Nachman) Mr. Bridges, based on the same consideration which you set forth in answer to my question as to the authority and responsibility of the master, are you familiar with the authority and the responsibility of the mates, by mates, I mean first mates aboard the Ingram vessels. A I believe so.

Q Will you tell us please what they are?

[2364] Q Will you tell us then — I think you told us then — will you tell us the duties and responsibilities and the authority of the second mate unlicensed? Can you answer that question? Did you answer that question? A I have.

TRIAL EXAMINER:

He said practically none.

Q (By Mr. Nachman) What do you mean by practically none?

MR. GORE:

I don't know if the witness knows that he is supposed to answer the question.

TRIAL EXAMINER:

Wait a minute. The witness is a very polite gentleman.

Mr. Bridges, you may now proceed with your answer. The question was, what do you mean by practically none.

THE WITNESS:

The only reason I can give for that is the second mate is usually more experienced than the regular deckhand and the master may at times tell him take a man from the deck crew and go to some job.

Q (By Mr. Nachman) My question, Mr. Bridges, relates to

[2365] the responsibility and authority of the second mate unlicensed as such and those inherent to these positions. Do you have any? A I would say no.

[2463] REDIRECT EXAMINATION

Q (By Mr. Nachman) Mr. Bridges, I am showing you Respondent's Exhibit 26 which has been admitted in evidence and which has been identified as the Seniority List of employees of the Ingram Barge Company as of March 1, 1957, and I ask you to examine Page 3 thereof under the sub-heading second mates-unlicensed and read to yourself those names and

[2464] and I will ask you a question about it. A Well I —

Q There appears as a first name, Max Brewer. Can you tell us whether or not Max Brewer was in the employment of Ingram Barge Company, July 5th, 1958. A I believe he was.

Q You say you believe he was, is that an expression -

MR. GORE:

Objection, he can't ask him what he means by his last answer.

TRIAL EXAMINER:

What more do you want the witness believes.

THE WITNESS:

The pay roll will show. It is my opinion he was.

Q (By Mr. Nachman) The second name is George P. Doom, can you tell us whether or not he was in the employment of the Ingram Barge Company on July 5th, 1958? A He was.

Q The third name is Robert B. Joyce and can you tell us whether or not he was in the employment of Ingram Barge Company on July 5, 1958? A He was.

Q The next name is Norman Riggins and can you tell us whether or not he was in the employment of Ingram Barge Company on July 5, 1958? A He was.

[2465] Q The final name is Jean C. Borden and can you tell us whether he was in the employment of Ingram Barge Company on July 5, 1953? A I am not sure. We had some changes on that boat and I am not sure that he was there then or not.

Q Now, with respect to Brewer, Doom, Joyce and Rinnings, whom you say were employed by the Ingram Barge Company on July 5th, 1958 —

MR. GORE:

Objection to the question he is misstating the witness' testimony.

TRIAL EXAMINER:

Include the word "believe".

Q (By Mr. Nachman) — whom you believe were in the employment of Ingram Barge Company on July 5, 1958, can you tell us in what capacity they were employed as of the date mentioned? A They were employed as second mates.

Q Licensed or unlicensed? A Unlicensed.

[2468] Q (By Mr. Nachman) In what capacity was Tom Miller employed by Ingram Barge Company on or about July 5, 1958?

MR. GORE:

Objection.

TRIAL EXAMINER:

If this witness knows the capacity of this person employed I will permit him to answer.

THE WITNESS:

To the best of my recollection he was second mate.

Q (By Mr. Nachman) Licensed or unlicensed? A I believe he was unlicensed.

Q Do you know anyone employed by Ingram Barge Company on or about July 5, 1958 by the name of Huie P. Keeleng. A Yes, sir.

[2469] Q In what capacity was he employed by Ingram Barge Company on or about July 5, 1958?

A Second mate.

Q Licensed or unlicensed? A Unlicensed, I believe.

[2491] TRIAL EXAMINER: . . .

Will Mr. Hutcherson take the stand. It is not necessary to swear you in as you have been sworn in before but may I simply remind you that the testimony that you are about to give you will still be under oath.

CROSS EXAMINATION (Continued)

Q (By Mr. Gore) . . .

[2528] Q You know then that Under the Coast Guard rules a pilot licensed is an officer. A Yes.

Q And a mate licensed is an officer. A Yes.

Q And, you have on your vessels rilots licensed and mates who are licensed? A Yes.

Q And you have first mates who are licensed and you have second mates that are licensed? A It has been that way.

Q And in the Coast Guard rules a first mate licensed and a second mate licensed are officers? A If they are licensed mates it makes no difference whether he is first mate, second or third or fourth mate.

Q Yes. They are officers under the Coast Guard rules. A There is only one mate's license.

Q Yes, and they are officers under the Coast Guard rules? A Right.

Q And, you know don't you that the company follows Coast Guard rules? A They are obligated to follow Coast Guard rules and regulations, yes, sir. Q And they do, your company is no exception they follow them don't they? A They do.

[2554] Q (By Mr. Gore) You know now do you not that a licensed pilot at least before May 1, 1958, had the authority in the Ingram Barge Company to issue an order? A When the master was aboard he didn't issue any orders.

Q That is not what I asked you. I am asking you whether he has the authority to issue an order? A Yes, he has the authority to issue an order? A Yes, he has the authority to issue orders.

Q All right. And it is also true and you now know it, is

[2555] not, Mr. Witness, that at least prior to May 1, 1958 the mate, a mate, the licensed mate, had authority to issue an order? A Under the jurisdiction of the master he has.

Q All right. He had the authority to issue an order. A Yes.

Q Everything aboard the ship was under the jurisdiction of the master, was it not? A That is correct.

Q Even the chief engineer was under the jurisdiction of the master? A The master is in charge of the operations of the vessel, the safe operations of it.

Q And, likewise when you issue an order you are issuing an order under the jurisdiction of Mr. Bridges, are you not? A Right.

Q And your orders are carried out and are expected to be carried out, are they not? A They should be.

Q Right.

REDIRECT EXAMINATION **[2556]**

Q (By Mr. Carter) Mr. Hutcherson, there are occasions on the Ingram vessels when paint has to be chipped off of the vessel? A Yes.

Q Who does that?

MR. GORE:

Objection, improper redirect.

TRIAL EXAMINER:

Overruled.

THE WITNESS:

The deck department.

Q (By Mr. Carter) Who is the deck department made up of? A Mates, tankermen, deckhands.

Q Now, who does the work of chipping paint?

MR. GORE:

Objection, totally irrelevant.

TRIAL EXAMINER:

Overruled.

THE WITNESS:

Everyone in the deck department has a part in doing that particular line of work.

Q (By Mr. Carter) Well what is the mate's part in doing that work? A He will assist all the rest of the people on the boat

[2557] in doing that work.

Q Does he do anything different with regard to chipping paint?

MR. GORE:

Objection.

TRIAL EXAMINER:

Wait a minute. Let counsel finish his question.

MR. CARTER:

I will withdraw the question.

Q (By Mr. Carter) Specifically when there is paint to be chipped off the boat what does the mate do? A He helps chip the paint is all I know.

Q All right. Do you have painting to do on the boat after it has been chipped off? A Yes.

Q Who does that? A Everyone in the deck department as I stated previously pertaining to the work.

Q Does the mate do any painting? A Yes he is supposed to paint as well as the rest of the persons.

Q Does the deck ever have to be scrubbed on the Ingram barge? A Yes, we do maintain clean boats.

Q Who scrubs the deck? A Everyone in the deck department, it is his job to keep the boat clean and scrub it.

Q Does the deckhand participate in scrubbing the deck?

[2558] A Yes.

Q Does the tankerman participate in scrubbing the deck? A He does.

Q Does the mate participate in scrubbing the deck? A He does.

Q Now, is there ever occasion on the Ingram vessels to splice cable? A Yes, there is.

Q Who does the splicing of cable? A Anyone that has the knowledge of splicing the cable.

Q Who might this person be? A It could be anyone, deckhand, tankerman or mate.

Q Do deckhands from time to time splice cables? A Yes.

Q Do tankermen from time to time splice cables? A They do.

Q Do mates from time to time splice cable? A Yes, they do.

Q Now, is it ever necessary to take coffee to the master or pilot to whomever is on watch in the pilothouse? A It is necessary, it is.

Q It is something that is required for the safety of the vessel, to keep him awake?

MR. GORE:

Objection to that.

TRIAL EXAMINER:

You mean because it is leading, or because it calls for a medical conclusion on the part of a

[2559] lay witness.

MR. GORE:

I withdraw the objection.

MR. CARTER:

We will withdraw the question rather than go through that nonsense.

- Q (By Mr. Carter) Mr. Hutcherson, who takes coffee to the pilot or the master whoever is on watch? A Anyone that is available to take the time when the pilot wants coffee.
- Q Does the deckhand take coffee to the pilot? A Yes, they do.
- Q Does the tankerman take coffee to the pilot? A Yes, they do.
 - Q Do mates take coffee to the pilot? A Yes, they do.
- Q Now, is it necessary to take on stores for the vessel?

 A It is.
- Q Who takes on stores for the vessel? A The persons in the deck department.
 - Q Do deckhands take on stores for the vessel? A Yes.
- Q Do tankermen take on stores for the vessel? A Yes.
 - Q Do mates take on stores for the vessel? A Yes.

TRIAL EXAMINER:

Mr. Carter, I would be obliged if I could have some elucidation as to what is meant by the word,

[2560] "take on".

Q (By Mr. Carter) Explain what you mean by take on stores. A The store boat comes alongside the towboat and someone has to help the man take the stores off of this boat and take them back to the galley and put them in the galley or else put them on the shelves for the cooks.

TRIAL EXAMINER:

By stores, you mean groceries.

THE WITNESS:

Groceries and supplies.

Q (By Mr. Carter) Is it correct to understand then that this involves the manual labor of lifting supplies from one place to another, is that correct?

MR. GORE:

Objection.

TRIAL EXAMINER:

Overruled. I understood that to be the meaning of the testimony already given but if you want that answer.

MR. CARTER:

I did too, but I wanted to make sure that everybody —

TRIAL EXAMINER:

That is all right. I will give you permission to ask and have the question answered.

Q (By Mr. Carter) Will you answer the question. A It does require lifting and manual labor.

Q All right. Does anybody ever pick up mail from the Post Offices along the route for the boat? A Yes, it is necessary at times to have that done.

Q Who picks up the mail from the post office when it is

[2561] necessary? A Anyone in the deckhand — I mean the deck department.

Q Do the deckhands pick up mail? A A deckhand may be instructed to pick up mail.

Q All right. Does a tankerman occasionally pick up mail? A He could yes.

Q And the mate picks up mail also? A He could be instructed to pick it up also.

Q All right. Do the Ingram vessels have windows on the vessels, that is the boats of Ingram? A Yes, they do.

Q Are those windows ever cleaned? A Yes, sir they are.

Q Who does the cleaning of the windows? A Personnel in the deck department.

Q Do deckhands clean windows? A Yes?

Q Do tankermen clean windows? A Yes.

Q Do the mates clean windows? A Yes.

[2578] RECROSS EXAMINATION

[2590] Q (By Mr. Gore) What about the small boat, the motor launch, who has authority or who has the responsibility to see that is kept in good working order? A The mate.

Q Does he have the authority to do anything about it if it is not in good working order? A Only if he advises the master, he does.

Q All right. What does he have the authority to do? A Whatever the master agrees that should be done; maybe he has to put it into shape or repair it.

Q Is it your testimony that though he has that authority he must do it himself with his own two hands? A He has help with anything like that. He don't do it by himself.

Q He has the authority to direct others to work on the launch does he not? A Yes, he would have the authority to direct others if the master advised him to get help to do a job.

Q He would have the authority to direct others to work on the launch? A Sure.

Q As a matter of fact you know very well don't you that the master does not tell him in each case to get help to work

[2591] on this job? A Not for every detail, no, sir.

Q A job has to be done and the mate has to see that the job is done and it is for the mate to get help and see that the job is done, isn't that correct? A It is correct and the master checks to see the mate did the job right.

Q That is right. And that is true with respect to the motor launch is it not? A Right.

Q And that is true with respect to all other equipment in the deck department? A Right.

Q And with respect for example to the motor launch if he is directed or order given by the mate for someone to work on the motor launch and without good cause that order is not obeyed the mate then may and would put that man on report. A He would advise the master that the man refused to do a job.

. . . .

[2595] Q He has the responsibility of maintaining the deck department in the vessel is that not true, his responsibility from the captain? A Through the master of the vessel he is.

Q Yes. And, through the master he then is in maintaining the vessel may direct others to do some chipping and some painting and things of that kind and he may do it himself? A Right.

Q And it is his job to see that the proper chipping and painting is done? Through the same channels. A That is correct.

Q And he sees that it is done in the manner that he thinks is the best to be done? A He or the master sees best.

Q All right. Your answer would be the same would it not with respect to every aspect of the maintenance of the deck department? A Ask that again please.

Q Your answers would be the same as it was with respect to the launch and with respect to the painting and with respect to the maintenance, the general maintenance of the deck department? A Yes.

[4100] LEE C. BRAZIE

a witness called by and on behalf of the Respondents, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Gore) ...

Q And, Mr. Brazie, by whom are you now employed? A Mississippi Valley Barge Line Company.

Q And in what capacity are you employed? A As master and pilot.

[4103] A Well, part of them was pilot and part of them master and pilot.

Q All right. Now, on what boat are you now employed at Mississippi Valley? A I was on the VALLEY VOY-AGER when she was tied up July 1.

Q And you were the regular master of the VALLEY VOYAGER? A One of the regular masters, yes.

Q How many did they have? A Two. We worked day on and day off.

Q But when you are on you are the only master who is on the vessel, is that correct? A That is correct.

Q Now, the VALLEY VOYAGER, is that a small or a large tow boat?

[4104] A Well, it is one of the larger ones.

Q And what size tows, what have you pushed with the VALLEY VOYAGER? A Well, personally myself I would say the largest tow would probably have been around 38, 40 barges, but they have pushed more than that, but not myself.

Q And yourself, can you tell me about how long a tow that would make up, say, going northbound? A Oh, fifteen, sixteen hundred feet depending on the individual, how they felt like making the tow-up, but ordinarily you naturally make it up longer northbound that you would southbound.

[4105] Q Now, Mr. Witness, can you tell me with respect to the authority of masters, pilots and mates aboard the various vessels that you worked on, has there been any basic difference in the authorities that the masters, mates and pilots have? A You mean that a master has to a master on another vessel?

Q Yes. A No difference.

Q And with respect to that, Mr. Witness, have you ever operated on vessels with unlicensed mates? A Yes.

Q And with respect to that have there been, is there any authority difference in the authority exercised by an unlicensed mate as compared to a licensed mate? A None whatsoever.

Q Now, can you tell me what companies you worked with where there were unlicensed mates? A Well, let's see. John I. Hay at one time and Erlbacher and various of these other companies like Standard Oil and the Mississippi Valley Barge Line there has been times that we have had unlicensed mates for a short period because there

[4106] wasn't a licensed mate available, we were short-handed and we'd use an unlicensed mate until a licensed mate was available.

Q And when you were using an unlicensed mate would

he have the same or a different authority from a licensed mate? A The same authority.

[4141] TRIAL EXAMINER:

All right.

Q (By Mr. Gore) What do you mean by the word, "order"? A Issuing orders, I mean issuing orders in their line of duties. You order a man to do so-and-so and — I mean in his line of work, just general orders.

Q All right. Now with respect to persons who are not in an officer capacity, as you understand it, do they have authority to issue orders? A They do not.

Q What persons are not in an officer capacity aboard a vessel, as far as you know? A Well, I will tell you the ones that are in an officer capacity.

[4142] Q O.K. A Master, mate, pilot, and engineer.

Q All right, now. A The rest are not officers.

Q O.K. Now, what specific kind of orders, for example, can they issue, and to whom? First, to whom would a mate issue orders? A The deck hands.

[4153] CROSS-EXAMINATION

Q (By Mr. Nachman) . . .

[4175] Q Now, of course, you have a mate aboard, too? A That's right.

Q And what are the mate's duties and responsibilities and authorities?

A Well, he is in charge of the deck crew. Or-**[4176]** dinarily, if the pilot wants to make a landing or something like that, you know, something of that nature, why, he will tell the mate what he wants done and the mate in turn will tell the deckhands. However, he can, the pilot can still issue an order to a deckhand if he wants him to put a line on a timber head. He can issue that order to him. Ordinarily when you are making a landing a mate is on the head of the tow to give you a directional information how to get into a landing. You have a thousand- or fifteenhundred-foot tow out there, it is closer for him to tell how close you are than you are in the pilot house. If you wanted to get a stern line out, that would be on the back end of the tow close to the boat, the pilot would tell a deckhand to put a line there.

Q Isn't it a fact that the man at the head of the tow, he is sort of the eyes and ears of the pilot going through this operation? A Well, he assists, I'd say he helps your

eyes and ears.

Q He helps. In other words, it might be foggy, it might be at night when your lights don't — A (Interrupting) Well, even in daytime it is hard to judge your distance.

Q Or in daytime because of the distance you can't judge it, he is there to help your eyes and ears so you don't have an accident?

[4177] A Yes. He assists you.

Q Now, let's assume a case, Mr. Brazie, where the pilot is on duty, the master is asleep, you are going through a lock which requires, that's a very skilled operation on the part of the pilot, is it not? A Well, you've got to hit the hole.

Q He has to know what he is doing. He has to know what he is doing, doesn't he? A Well, we hope he does.

TRIAL EXAMINER:

What would be the consequences of a mistake in judgment?

THE WITNESS:

You could damage a barge, you could injure someone or something, yes, a pilot should know what he is doing when he is entering a lock.

Q (By Mr. Nachman) Now, ordinarily when he is going through that lock that way the mate is on duty, is he not? A Well, either the first or second mate.

Q One or the other is on duty? A Ordinarily the first mate stands watch with the pilot and the second mate stands watch with the master. It is customary.

Q So then ordinarily the first mate would be on duty?

A Ordinarily, yes.

Q Now, would there be any sort of a conference when the pilot and the first mate before they started into this operation as to what he proposed to do and how he proposed to do

[4178] it? A Normally not because they understand what you are going to do. Of course, on most of the boats in the modern day we have a speaker running to the head of the tow. Of course some of them don't have, but most of them have a speaker, and you converse back and forth with the mate and he will tell you, of course he don't necessarily tell you to come ahead and shove her into the lock or something like that, but he will tell you about

how far he thinks the head of the tow is from the lock wall and whether you are outside of a line with it or under it or such as that.

Q Well, I just want to get a complete picture of how this is done. I think we have established the fact that the mate is usually on duty when the pilot is going through a lock and the pilot has informed the mate of his purpose to go through the lock in a certain way, has he not? A Well, there is only one way to go through.

Q Well, what is that way? A Enter the lock; enter the lock. They close the gates behind you.

TRIAL EXAMINER:

Stay on the water, I suppose.

Q (By Mr. Nachman) Now, who then rounds up the deckhands and stations them where they are supposed to be? A The mate.

Q The mate does that.

[4179] A Yes, sir.

[4183] Q I understood you to say that there are times when the pilot gives his directions to the mate. A Oh, yes, usually.

Q Usually gives them to the mate? A That's right, unless it is a case where that the mate is on the head of the tow and you've got to give instructions to somebody on the stern of the tow to put a line on or do something or other that the mate hadn't told him before, the mate doesn't know that you are going to want it. Then you tell the man direct.

Q In other words — A (Interrupting) Because there

would be no point in telling a mate on the head of the tow over the speaker what you wanted

[4184] this man to do and have him try to relay it to him because the man would never hear it.

Q Perhaps I misunderstood you, but am I correct in my assumption that in the ordinary course of events the mate has already told the deckhands what is going to be expected of them and what they are supposed to do in this operation? A Well, ordinarily, yes, I mean unless something is unusual.

Q That's the ordinary chain of events, that the mate has already told the deckhands what they are to do? A He has told the men where they are supposed to be stationed and what their job is. But, if you have an abnormal condition, why, you've got to act abnormally.

Q Then something arises which necessitates a change

in plan? A That's right.

Q Then on that occasion the mate, you say usually rides at the head of the tow? A Well, he always does in cases where you are going into a landing or anything, because you naturally rely on his judgment to help you get in there without too much headway or so forth.

[4199] Q All right. Now, has the occasion ever arisen in your experience where the pilot or yourself as master wanted a cup of coffee? A Oh, yes.

Q You never have seen a mate go get a pilot a cup of coffee, have you? A Yes, I have seen it happen.

Q They do that occasionally? A They have. They don't have to, but they do it.

Q They don't have to. If you asked a mate for a cup of

coffee and he didn't get it for you nothing would happen to him? A Well, I have never had that kind of mate; I don't know.

- Q You have never had that happen where anybody would fail to get you a cup of coffee? A That's right.
 - Q Deckhand or mate? A That's right.
- Q Now, on these boats you have been on, do the mates ever do any part of the maintenance work on the boat? A Just what do you mean by the maintenance work?
- Q Well, don't you occasionally have some paint to be scraped on a boat? A That's right.
- [4200] Q And the mates never do any of that, do they? A Sometimes they help with it. I mean we delegate the mates to have the work done, see that it is done.
- Q All right. A And then instruct the deckhands in turn what they want done and occasionally they help with it themselves. Occasionally they help with it and a lot of times they don't. They don't have to, but occasionally they do.
- Q All right. Now they don't ever help with the painting on the boat, do they? A Yes, occasionally.
- Q Well, now, they don't ever help clean up the galley, do they, the mates? A I never have seen them do that. They are not obligated to help with any of the manual labor such as painting and scrubbing but they do occasionally do it.

[4220] REDIRECT EXAMINATION

Q (By Mr. Gore) ...

[4224] Q Will a pilot issue any orders to deckhands with respect to the lights aboard the vessel? A Well, ordinarily the mate does that, but a pilot can do it. I mean if the mate hasn't said anything about it and the pilot notices a deckhand out on the tow and they haven't lit the lights or something to that effect, why, he could call their attention to the fact that the lights haven't been lighted, but the mate ordinarily takes care of that.

ARCHIE THOMAS HAYDEN,
a witness called by and on behalf of the Respondents, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Gore) ...

Q Now, Mr. Witness, how long had you worked for Commercial Barge Line?

[4234] A Five years.

Q And in what capacity? A As a deck-hand.

Q And had you worked as a deck hand for any other companies? A Yes, sir, I worked for Mecklin's, Nashville Coal and Central Sawyers.

[4247] "Q. And as a deck hand from whom did you receive orders?"

A From the captain, and you receive orders from the pilot when he is on watch, the first mate and the second mate.

Q (By Mr. Gore) And did you work with only licensed personnel? A No, sir, I have worked with unlicensed personnel.

MR. NACHMAN:

I didn't hear the answer, I am sorry.

MR. GORE:

No, sir, I have worked with unlicensed personnel, was the answer.

Q (By Mr. Gore) And have you received orders from unlicensed mates?

MR. CARTER:

Objection.

A I sure have.

TRIAL EXAMINER:

Just a moment, there is an objection. I sustain the objection.

[4248] Q (By Mr. Gore) With what unlicensed personnel did you work? A Well, second mates.

Q Now, in working with second mates and unlicensed second mates, specifically, can you tell me under what circumstances you received orders? A Well, for instance, you know, say I am making up a tow, he tells me how he wants it made up or check the running lights, tighten up the couplings, or most anything concerning the towing of a boat.

Q And if you were to refuse to obey the order, what, if anything, would have happened? A Well, to refuse a second mate would be the same as refusing the first mate or the captain, it would be all the same.

Q And what does that mean to you or what does that mean? A Well, to refuse to do something would mean the chances are they'd discharge you.

Q And what kind of orders, if any, did you receive from pilots? A Well, from pilots, practically the same as a mate would give. They'd say, "Archie, tighten this coupling for me", or put another line to this cowel or something.

Q And would you have to carry out those orders? A I sure would.

[4249] Q And if you didn't, what was your understanding? A Well, if I didn't I just wouldn't have a job long because you have got to take orders and do what they tell you.

Q All right. Now, could another deck hand issue orders to you? A Well —

Q (Interrupting) When I say issue, I mean can he originate an order to you? A If it comes direct from the captain and he tells this deck hand to tell Archie to do so and so, he could.

Q Could he make up the order himself? A No, he could not.

Q Can the pilot make up an order himself? A If the pilot is on watch at the time, he sure can.

Q Can the mate make up the order himself? A That's

right.

Q Can the unlicensed mate make up the order himself? A That's right, if he is on watch at the time.

Q And if you refused to carry out an order that was made out by a crew member or another deck hand, what, if anything, would happen? A I don't think anything would then, you know, because he doesn't have the authority to, unless he is directed to do so.

[4250]

CROSS-EXAMINATION

Q (By Mr. Nachman) . . .

[4256] Q Now, as deck hand, what duties do you perform? A Well, the first thing, making up tow, you know, help to make up the tow and help make locks, tie-ups, and then the cleanup work on the boat, clean the floors and, you know, keep the boat clean. That's a deck hand's duties.

Q That in substance constitutes all the work you do. A That's right. That's plenty sometime.

Q Now, you work under whose immediate direction? A Well, if you are on — generally, Commercial Barge Line had this system, some barge lines are different. On the first watch, I'd say from 6 to 12 is the master's watch and the first mate's. Some barge lines are different, they

work the opposite way. But if I am under the master's watch I work the first mate, I take orders from the captain and the first mate.

Q And you are told generally what to do by the first mate, aren't you? A That's right.

Q He is the one that ordinarily tells you what to do?

A Ordinarily he will tell me what to do.

Q Now, when you are making up a tow or going through a lock or picking up a barge or docking a barge, landing a barge, who tells you what is to be done?

[4257] A The first mate.

Q And you carry out those duties that the first mate assigns to you? A I sure do, yes, sir.

Q Now, do you ever work during the time the pilot is on watch? A Yes, I have, lots of times.

Q And when the pilot is on watch, who assigns your duties to you? A Well, the pilot and the second mate.

Q Well, generally, the second mate is on watch then when you are on watch? A That's right.

Q And who generally tells you what is to be done? A Well, the second mate.

Q In other words, during the time the second mate is on watch you receive the orders from him, which, if you were on the opposite watch, you would receive from the first mate. A That's right.

Q Now, under what circumstances do you receive any word from the pilot as to what you are to do? A Well, for instance, if the second mate should be busy, you know, doing some little job, and the pilot sees something that needs to be done, well, he would tell the deck hand to go do it.

[4258] Q Well, is that something that happens frequently or infrequently or what? A Yes, it

does, especially if you are, say, in low water or high water or anything like that, say, a coupling might become loose, you know, maybe the mate didn't notice it and the pilot would, well, say —

Q (Interrupting) Well, what would he say to you? A He'd say, Archie, go out there and tighten that coupling for me or go out and check the running lights, anything

like that.

[4272] Q (By Mr. Carter) Mr. Hayden, doesn't the mate help to clean up the floors, also? A He sure doesn't.

Q He sure doesn't. He doesn't lift a hand during that

operation, does he? A No, sir.

Q And if the galley needs to be cleaned he never lifts

[4273] hand to do that, does he? A No, sir, I have never seen him do it yet.

Q All right. And if there is any painting aboard the vessel to be done he never lifts a hand toward that, does he? A A mate doesn't have to paint if he don't want to. It is just on his own. If he wants to pick up a paint brush and just help out a little, he probably could, but he doesn't have to, he is not forced. What I mean, the captain doesn't tell him.

Q And he doesn't have to prepare the vessel for painting, such as scraping the old paint or anything like that? A No, sir, that's the deckhands' job.

Q Sir? A That's the deck hands' jobs to prepare.

Q And the mate doesn't have to tighten the lines on the tow, does he? A Well, most barge lines, the big barge lines, I don't think they do, but over there with Commercial we didn't carry enough men. If he wanted to do that he could, but he doesn't have to, you know, unless he just wants to.

[4282] REDIRECT EXAMINATION

[4285] Q If a deck hand is standing at an unattended line and tells you to handle that line, would you do it?

[4286] A No, I wouldn't, because he is just standing there, you know. If he was appointed to be at that position and just standing there and let the line get slack on his own hook, you know, and then ask me to take the slack up, I would not do it.

Q Well, what, in effect, would you say? A Hell, do it yourself.

[4289] JAMES W. COATS

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Gore) ...

[4299] Q Referring you to July 21, 1958, do you recall anything that happened on that date? A Yes, sir. At about 8:30 in the morning was when I noticed this small boat and barge come alongside the tow and as it approached I recognized Captain Cioll being aboard it, . . .

[4306] Q And can you tell me what is the authority of the mate, the

[4307] first mate? A The authority of the first mate is to take care of the deck and direct any orders given him from the master or to be passed on to the deck hands or to the second mate.

Q And what function does he perform? What does he do? What does he actually do aboard the vessel? A He sees that the vessel is kept in shipshape, what I mean by that is, clean and in a safe and navigable way and has the deck hands to perform their duties as far as keeping up his riggin, like making lines, splicing wire, and anything that may be necessary for the navigation of the vessel, and he is in charge when the making or breaking of tow, locking or any work that is to be performed on deck.

Q Does he have any authority to issue any orders or directions to deck hands? A He absolutely does.

Q And does he do it? A Yes, sir.

Q And what does the second mate do aboard a vessel? A The same as the first mate only he has charge of his watch and runs it in the same manner as the first mate does his.

Q And does he issue directions and order to deck hands? A Yes, sir, he does.

Q And what happens if a deck hand refuses to comply or obey, comply with these orders or directives?

[4308] A From a second mate?

Q Second mate or first mate. A He will

be discharged.

Q Is there any difference with respect to the second mate or the first mate? A No, sir.

[4385] REDIRECT EXAMINATION

Q (By Mr. Gore) . . .

as you are going through? Just tell us as if you are going through. A Well, if I was going through, after I get in there, on this particular boat, the HORTENSE INGRAM in operating on the upper Mississippi, we had what we call a single set-over of the barges. The tow was too long as it was to lock through as it was made up. After we would get in the lock and get the leadbarges, whether it was one, two or three, tied off as the lock master requested, then we would break whichever coupling that we were intending to set the other barges over.

Q When you say "break the coupling", what do you mean? Let's make it clear. A That means to knock off the rigging on the coupling so that it is completely loose from the rest of the tow.

Q All right. A Then as we back out we'd have what we call a swing line. One of the deckhands or whoever

was handling it would handle that swing line as we set the barges over, then we'd shove up alongside. Our tow was 50 feet wide in most cases.

Q Now, when you broke the coupling who was on the barges that were separated?

[4387] A The mate ordinarily stayed with the barges that had been tied off because he would be on the head of the barges.

Q Now, who would be on the barges and the boat, which crew members? A The deckhands would be, unless we were knocking out the boat there wouldn't be any deckhands on the boat.

Q Now, would you issue then orders to the deckhands who were left on the rest of the tow, on the remainder of the tow? A Yes, sir.

Q Tell us what kind of orders you would issue. A We'd tell them if we need a bumper we'd tell them where the, where to place the bumper for the safety, as the Examiner said, to avoid collision or from, if you wanted him to get a line at a certain place, you'd tell him, catch me a backing line or tow line, whichever case it may be.

Q And at that point you would be issuing the orders directly to the two deckhands that were left? A That's right.

Q And would that be so whether you were a master or a pilot? A That is correct.

[4388] CHARLES DAVID CALLIS,

a witness called by and on behalf of the Respondents, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Gore) ...

4.

[4389] Q And are you now employed, Mr. Callis? A Yes, I am.

- Q And by whom? A Simpson Oil Company.
- Q And in what capacity? A Tanker man.

Q And at any time were you employed by the Ingram Barge Company? A Yes, I was.

Q And when were you employed by the Ingram Barge Company? A From about October of '57, to July, the following July.

Q '58? A Yes.

[4400] A Well, I took the same orders from a second mate, licensed or unlicensed that I took from a first mate.

Q And give us some examples of that. A Well, for instance, spotting a barge, why, he would tell me what kind of a line he wanted and where, and the same way with making lock or anything, he'd tell me which position he wanted me to work in.

[4402]

CROSS-EXAMINATION

Q (By Mr. Nachman) . . .

[4404] A Well, in approaching a lock the mate was on the head and the Ingram had at that time a P.A. system and he would at intervals talk to—

Q (Interrupting) You say "he", who is that?

A The mate. At intervals would give the pilot the approximate distance he was from the lock wall.

Q Well, let me ask you another question. Isn't it a fact that before the mate went out on the head of the tow he had placed his deckhands and told them what was expected of them in that particular operation? A Well, yes, but not at every lock, because the way we were working with the same tow practically all the time, after a man was told what position to work, why, then it was pretty well understood.

Q But if there was any specific information or anything peculiar to this particular operation he would tell you that before he went out on the head of the tow, wouldn't he? A Yes, that's right.

[4409]

RECROSS EXAMINATION

Q (By Mr. Carter) . . .

[4410] Q For example, in the approaching of a lock, the mate is going to be doing something up at the head of the tow toward the performance of that approach of the lock just as the deckhand is going to be doing something back where he is designated to be, isn't that right? A Yes, I would say that.

Q And similarly when the boat and its tow approaches a dock for a landing, for example at a terminal, the handling of lines to bring the tow and the boat on into the dock is done by the deckhands and the mate, is it not? A Yes, sir.

Q So that assuming that you have either one or two or even three deckhands around on the boat at that time, they and the mate will all be handling lines in bringing the boat on into the dock, will they not? A If there is that many lines out, yes.

Q Yes. Well, normally there would be at least three lines, would there not? A I would say so, yes.

Q In a normal tow approaching a normal terminal.

Would that not be correct?

[4411] A Yes, sir.

Q And in such event you would have the mate on one line, the deckhand on another line and then another deckhand on still the third line? A Yes, that would be true.

Q And they would be working as a team to bring that boat on into the dock. That's the whole idea, isn't it, to work as a team? A Yes, you've got to work together.

[4414] CHARLES BURDICK,

a witness called by and on behalf of the Respondents, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Gore) . . .

Q And, Mr. Burdick, can you tell us where you are now employed? A Sinclair Refining Company.

Q And in what capacity? A As a licensed first mate.

[4415] Q Now, can you tell me, Mr. Witness, what the job of the mate is? A Well, the job of a mate would be to organize, supervise and deputize the deckhands.

[4416] Q ... Can you tell me now, continue with the job that the mate does concerning the deckhands? A Well, like I was saying, in organizing them you select or pick the jobs that has to be done that you see that has to be done or that the master or pilot has seen that has to be done and had relayed to you and in supervising the job you see that they do it, that the orders you have gave them is carried out and in deputizing them I would say that that's when you tell them to do it and you pick

each individual for certain jobs and detail them to certain

jobs.

Q And in accordance with what you have said, what kind of jobs are you talking about? A Well, that could be generally speaking a little bit of everything. "Sooging", scrubbing, paint work, tow making, caring for deck equipment, such as oiling winches, ratchets, and caring for searchlights, sanitation work of all types.

Q Anything to do with stores? A Taking on stores,

replenishing with supplies.

Q What does the mate do with respect to taking on stores? A Well, it is generally his job to see that the stores have

been gotten on or put in the storeroom in that [4417] respect -

Q (Interrupting) How does he see that it is done? A

By telling the deckhands to do it.

Q All right. And does the mate engage in any instructional work at all? A Yes, quite a bit. That's part of the

job.

Q Can you tell me what kind of instructional work the mate engages in? A Showing a man how things are to be done, such as splicing cable and making lines, splicing lines, showing him the difference between backing lines and towing lines and jockey wires and showing a man, especially a new man, where the lights go and how they are set, running lights.

Q Now, is this the job of the first mate that you are talking about? A That's the job of the first or second

mate.

Q Now, when is it the job of the second mate? A It is his job to see that these men are instructed to these duties on his watch.

Q And can you tell me whether that is the job of a mate licensed only? A No, that's the job of any mate. If he is hired as a mate that's his job. The license has nothing to do with it.

Q And is that a job when a person is acting in the capacity of a mate?

[4418] A That's right, it is his job.

Q Now, can you tell me, Mr. Witness, whether or not there is any distinction as far as you know in the authority with respect to masters, mates, and pilots on the vessels that you have operated on? A None that I know of.

[4419] Q And can you tell me whether or not the pilot has any authority to issue orders to persons who are deckhands? A Yes, the pilot has authority to issue orders to deckhands.

Q And can you tell me under what circumstances that would happen and that that is done? A Well, in practically any circumstance, but usually it is done in cases where the mate isn't available to give a direct order at that time.

A A good example would be in coming into a lock, the mate with one deckhand would be on the head of the tow and although the deckhand on the stern which has been placed there by the mate had his orders previously from the mate something might

[4420] change that the pilot would have to instruct the deckhand at, I mean the thing might, the whole situation as planned before might change and instead of getting a certain type of line maybe another line. Therefore the mate being on the head of the tow with the other deckhand it wouldn't be as easy for him to communicate with the deckhand on the stern as it would be for the pilot.

Q And now, is it usual, rare or occasional that the pilot will issue direct instructions to a deckhand in the course of locking or docking or coming alongside? A I'd like

for you to repeat that, please.

16.00

Q Is it usual, rare or occasional that the pilot will give direct orders, say, to this deckhand on the stern with respect to docking, locking or coming alongside? A I'd say it would be occasional.

Q And can you tell me what other orders, as you have indicated before, that he would give to the deckhand when the mate was not around? A Well, he might possibly, and they do a lot of times have the deckhands go on the tow and tighten rigging because there is no one, actually the mate in his position can't see as well as the pilot right immediately where there is a wire loose and maybe the barge gets to wiggling, and the pilot may point out to a deckhand or tell a deckhand to go tighten the wire, or possibly tell him to check the running lights and maybe

the
boat is loose in tow. He will tell him to tighten
the tow, there is an enormous amount of things
he could tell him.

Q With respect to him telling him all these things, what if the deckhand would say, nuts to you, I don't want to do it? A He would be fired, discharged.

Q If a crew member, if another deckhand told a deckhand to do these things and he said, nuts to you, what would happen to him? A Nothing, other than maybe an argument between them.

[4435] REDIRECT EXAMINATION

[4437] Q (By Mr. Gore) Mr. Witness, you were asked, you stated to Mr. Nachman on cross-examination that you have seen it happen that a mate has discharged or taken a man to the captain, is that correct?

MR. CARTER:

Objection.

A That's right.

TRIAL EXAMINER:

The objection is overruled.

Q (By Mr. Gore) Will you tell me under what circumstances you saw that that happened? A One example, or one case was this deckhand refused to splice cable and he was taken to the master.

Q And what happened? A And he was discharged?

Q Are there any other cases? A Well, probably; I can't think right off of any.

Q This is the one that you recall right now? A That's right, at present.

Q Do you know of any case where a mate took a man to the captain and he wasn't discharged? A No.

Q Now, you stated that you paint when you are aboard the vessel, is that right? A I have.

Q O. K. Now, can you tell me what kind of painting you have done?

[4438] A Well, it is not required. I have done it on

my own.

Q Have you done just — A (Interrupting) Possibly painting a sign or something that I wanted to — something that I thought possibly I could do better than a deckhand could.

Q You have done fine painting, is that correct? A That's right.

Q And this is a matter of your choice? A That's right.

Q As you understand it, did you have authority to direct someone else to do this work? A That's right.

Q With respect to chipping and sooging, what is your authority with respect to that? A To tell them to do it, to have them do it. Is that what you are asking me?

Q Yes. Do you have the authority to direct the deckhands to do that work? A That's right.

[4445] JAMES W. COATS,

a witness recalled by and on behalf of the Respondent, having been previously sworn, was examined and testified further as follows:

CROSS-EXAMINATION (Continuing)

[4452] Q (By Mr. Carter) Mr. Coats, isn't it a fact that on July 1 the payroll shows there were four mates and two deck hands aboard the vessel? A According to the payroll, but I can give you a very good clarification on that, sir.

Q Well, after I have finished I will be glad to clarify it

with you.

Now, on July 1, is it not a fact that it shows, the payroll shows there were four mates and two deck hands aboard? A The 2nd, yes, sir.

[4458] Q All right. Well, I don't think we have any big argument

isn't what you are saying that certain people in the normal course of events were upgraded sometimes to, say, second mate, and they may have worked as a second mate, and then at sometime during the course of business perhaps there were too many mates and when that happened those fellows would go aboard the ship but they would be aboard the ship as deck hands, but they would be drawing second mate's pay? A They would draw second mate's pay, but that was a company rule and they had, when they was acting as deck hand or tanker man they had no authority as a mate.

Q But they were actually deck hands, weren't they? A They were deck hands carried on the payroll as second mates.

Q Yes. A That was the company rule.

Q And at that time they were taking orders as any other deck hand took orders? A From the mates, yes, sir. From the mate or the pilot or the master.

Q All right. Now let's just isolate ourselves to this one example that we have shown you this morning and ask you with regard to that particular situation. Do you have a recollection as to which of these four mates were acting as mates? A Yes, sir.

[4460] Q Which ones were they? A Mr. Dexter Howell and Mr. Vernon E. Goodson.

Q And so Mr. Koen and Mr. Doom were actually deckhands? A Deckhands or tanker man. They were rated from tanker man up to second mate, I would presume.

Q Mr. Coats, what you have just said about the status of these men who were mates but who were actually deckhands, that was so whenever there were more than two mates aboard the vessel, I take it, is that right? A Yes, sir, you mean —

Q (Interrupting) In other words, this wasn't a peculiar instance here where only Doom and Koen were working as deckhands, but it was also true if, let's say, there were another instance two weeks later where Goodson and Howell were the mate and second mate and Doom was also on the boat. Even in that instance Doom would be working as a deckhand, is that right? A Or a tanker man, yes, sir.

Q And those occasions did happen from time to time, did they not? A Yes, sir.

[4481]

MARK E. LUCAS,

a witness called by and on behalf of the Respondents, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Gore) ...

[4486] Q And in effect and in authority was there any distinction in the orders that you gave as a pilot while you were on watch then the orders that you gave as master when you were on watch? A No distinction.

Q With respect to the direction of the mates and the

deck crew was there any distinction when you were on watch as a pilot with respect to that authority and, that is, those directions as to when you were on watch as a master? A No, there is no difference.

Q And can you tell me whether there was any difference that you have been able to perceive in the authority of a master, pilot or mate aboard the Ingram vessels of other companies on which you worked? A I see no difference.

Q Can you tell me what the authority of a mate is? A The mate is in charge of all the deck department on his watch.

Q And what does he do when he is in charge of a deck department? A He directs his men, his deckhands.

Q In respect to what does he direct them?

[4487] A Tow making, lock making.

Q He tells them what to do, is that right? A

Q Are they required to comply with his directions? A Yes, they are.

[4492] CROSS - EXAMINATION

Q (By Mr. Nachman) Mr. Lucas, in your experience have you ever operated with, say, a situation of three or four mates aboard and one or two deckhands? A Oh, possibly —

MR. GORE:

I object to the question, Mr. Examiner. It is not in rebuttal of any matter brought out on direct. There were no questions concerning how many deckhands or mates were aboard at any single time.

TRIAL EXAMINER:

Well, it has become an element of some note in the case.

MR. GORE:

Mr. Examiner, we are not in the case in chief. There were times when I started bringing matters in [4493] in the case in chief, you said these were matters of defense and not proper here. And you told me, as a matter of fact, Mr. Examiner, that you can take this witness on direct examination if you go into these matters, and it related specifically to these matters when it was not gone into on direct.

TRIAL EXAMINER:

Your objection is overruled. A Give me the question again.

MR. NACHMAN:

Would you read it back to him, please, Mr. Reporter. (Question read.)

A I will say I have operated with, say, three mates and two deckhands, maybe an unlicensed mate would be in the crew and two regular mates.

Q (By Mr. Nachman) Now, were those people who were in the classification of mates, did they work as mates?

A Two of them did, a mate on each watch.

Q And the third one — A (Interrupting) The third one, he would be either a tanker man or a deckhand.

Q But he was classified aboard the vessel as a mate and received mate's wages? A He would be classified on the seniority list as a second mate or relief mate.

Q And receive mate's wages. A And receive mate's wages.

[4494] Q But when he would, even though he were classified on your payroll as a second mate or a relief mate, in cases where you had two additional mates aboard he would operate as a deckhand or a tanker man, you say? A That's right.

Q And when he was operating as such he would be taking orders, not giving orders. A He would be taking orders from the regular mates.

Q In other words, he would be in the same situation as any other deckhand? A That's right.

[4497] Q (By Mr. Nachman) It is customary to have a mate on watch

[4498] at that time? A Yes.

Q And in preparing your plans to how you are going to execute the particular operation you would in advance inform the mate as to how you proposed to do it, would you not? A Yes.

Q And the mate, it was the mate's function to then go down and station the men at the required places and assign them the duties in accordance with your plan? A Yes.

Q And you also had a loud speaker so that you could communicate with people aboard the vessel and aboard the tow? A Most of the boats have P.A. systems.

Q Now, if it became necessary for you to communicate with the crew in any way, if the mate on watch were available to you, it is correct that you would communicate directly with the mate at that time, is it not? A If I was speaking to the mate on the head of the tow, yes, I would talk to him directly through the P.A. system.

Q Well, if you had occasion to direct that a certain line be tightened and the mate was at that point, even though a deckhand was also at that point, you would talk to the mate, would you not? A I would talk to the mate and the deckhand would take the directions from the mate.

[4499] Q From the mate. So it is only in those instances where the mate was not available or in position to carry out what you desired carried out that you would talk directly to the deckhand, isn't that correct? A That's right.

[4509] Q And that deck crew, would, of course, operate as a team in carrying out the functions that you were going to perform?

[4511] A Yes, they operate in a team.

[4513] Q (By Mr. Nachman) And each man would take his station at a given point, would he not?

A Yes.

Q And they would all be at separate points? A Not necessarily.

Q Well, where would they be then? Give us an example. A Well, I am saying two and three men on the head and one man back on the stern. They would be in different points, I mean they would be separated.

Q They would be separated one from another, you wouldn't have three men standing in one spot to do a particular thing, would you? A Oh, yes, a lot of times.

Q You would have them that way? A Yes.

Q And that would be whom, the mate and two deckhands, is that who it would generally be? A Yes.

Q And each man would have as a function the handling of lines to carry out his particular operation, would he not? A Yes.

Q So the mate and the deckhands would all be handling

[4514] for the purpose of carrying out your objective?

A Yes.

Q And the same thing would be true if you were docking a vessel or docking a barge or picking up a barge, isn't that true? A What do you mean, the —

Q (Interrupting) I mean you would have men stationed at different points for the purpose of handling lines to either pick up or dock the barge? A That's right.

REDIRECT EXAMINATION

Q (By Mr. Gore) . . .

[4516] Q And, Mr. Witness, when you worked at the Ingram Barge Company was it the usual situation to have three persons in the pay classification of mate in the deck force at one time? A Yes.

Q Was that usual? A Usual.

Q It was? A No, it was unusual for the — you mean, what classification do you mean, payroll?

Q Was it usual to have three mates, three persons who were called mates and paid as mates with one operating as a deck hand? A Yes, that was usual.

Q That was usual? A Yes.

- Q And were the same persons the persons who operated as a deck hand? A Yes.
- [4517] Q And who were they? Were they licensed or unlicensed? A How do you mean?
- Q Was it the second mate who would operate as the deck hand? A Yes.
- Q And would he be a licensed or an unlicensed second mate? A He would be unlicensed.
- Q And do you know of any such persons? Can you name them? A Yes; Charlie Doom is one.
- Q Do you know what organization Charlie Doom was a member of? A No, I don't.
- Q All right. Whom else? A And there was Bob Joyce, those are the only two I can remember offhand.
- Q There are no others that you can remember offhand, is that correct? A No.

[4827] JESS B. MARKS,

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Gore) . . .

Q And, Mr. Marks, where are you now employed? A Federal Barge Line.

Q And in what capacity? A Master-Pilot.

Q And are you assigned to any specific vessel? A The motor vessel UNITED STATES.

Q And is that a small or a large boat? A It is the most powerful in the world, inland towboat.

Q And have you been a master — can you tell me how long you have been a master? A I have been a master for Federal Barge Line approximately 20 years.

Q And have you worked at any other companies besides Federal? A Yes, I worked for Marine Transit Company, for Blaskie Barge Lines, for Hillman Transportation

Company, and, oh, Arrow

[4828] Transportation Company.

Q Possibly some others? A Possibly some others, yes, but I have worked for Federal Barge Lines for so long that I forgot some of the companies.

[4833] Q Do you know whether there is a distinction between officer personnel and non-officer personnel aboard a vessel? A There is quite a distinction.

Q I mean, is there such a thing as officer personnel? A Yes, there is.

Q And the deck crew, will you tell us who the officer personnel are? A In the deck crew the master, pilot and the mate, first and second.

Q And can you tell me, Mr. Witness, what is the distinction between officer personnel and non-officer personnel? A The distinction between officer personnel and non-officer personnel is that the officer has the right to give orders that must be obeyed, and the non-officer personnel does not have that right.

Q And, Mr. Witness, I hand you a copy of the by-laws of Local 28 revised in 1955, a copy of which is in evidence, and ask you whether or not you had anything to do with the revision

[4834] of these laws? A I did. I was on the by-laws committee that revised the by-laws.

Q And with respect to Article 1, Section 1, can you tell me in that provision what is meant by "officer capacity"? A Officer capacity means a person acting as an officer on a boat, licensed or unlicensed.

Q And what does that mean with respect to authority, if anything? A It means that the officer's capacity means the portion of the crew that is allowed to give the orders that must be obeyed.

[4837]

CROSS-EXAMINATION

Q (By Mr. Nachman) . . .

[4843] Q And the only time that would not be feasible is if the mate were at a position that he couldn't communicate with the deckhand, isn't that true?

[4484] A Yes, sir.

Q He is too far away to communicate with him, isn't that right? A The deckhand could be down at the head of the tow and the mate could be back at the galley and the pilot wouldn't search for the mate to tell him anything, he'd holler down to that deckhand and tell him to do something.

Q I see. Now, on those occasions when the pilot is preparing to go through a lock or to pick up a barge or to dock a barge, that's something that requires specialized knowledge, isn't it? I mean the man has to know what he is doing? A Yes, sir.

Q And the manner in which he will determine is the correct manner to perform that particular operation is something that he will work out in his own mind as to what he is going to do and how he is going to do it, isn't that true? A Counsel or, I — there are so many elements involved in such an operation that is beyond a man's ability to judge and comprehend and to get down to the fine points of absolute planning it is impossible to lay any specific and definite directions how you are going to accomplish these things. See, situations have to be taken care of as they arise.

Q We would come to that in our examination, Mr. Marks. I am assuming with you first now that he — and I recognize that there will be occasions where he will have to deviate from

[4845] his plan, but initially he lays out a plan, does he not? A It is a very rough one, yes, sir.

Q And he communicates that plan ordinarily to the mate? A That is right, sir.

Q And the mate then stations the deckhands at the required points and instructs them of the duties that are going to be required of them in carrying out that plan, does he not? A I can't feature these deckhands being stationed any one place. I mean they are continually changing. I mean the deckhand is stationed one place and then

he is changed around. He is originally told to go one place,

yes, sir.

Q Yes, but he is told what he is going to have to take care of during this operation? A No, not completely, no, sir, not at the outset of the operation, not at all.

Q He isn't? A No, sir. Not at all. He gets the direc-

tions as the operation goes along.

Q Well, what does the mate tell him initially? A He says, come on, boys, we are going to pick up a barge.

Q And doesn't he tell him, here, Sam, you take care of this situation, and, Bill you - A (Interrupting) After he gets out there he might tell him, you get a tow line and go out here and you run this ratchet out in here and this other one do something here, but then as

they come into the barge, why, there might be a [4846]

different thing.

Q I understand it might change, but initially he gives them their instructions of what they are to carry out?

MR. GORE:

Objection to that.

Q And he is proceeding through his lock. [4848] Now, during the course of that procedure, as I said, of course, circumstances will come up that will require him to vary from his original plan? A That's right, sir.

Q Now, in that circumstance what kind of communication does he have with the various members of the crew? What does he say to them? A Well, he is coming into a lock and, as you say, he has blowed the whistle and the mate maybe runs out or he has told the mate, well, we are going into lock number so and so, and we may have an out draft down at the lock so you take your deckhand with you and you and one of the deckhands gets on the head, the other gets on the outside corner and watch when we pass the bullnose. That's the intermediate wall, the short wall. There is a short wall and a long wall on the locks. And the third deckhand may be back in the coupling. So he is coming into the lock and everything seems to be going pretty fine and then it takes a sudden move out, so he hollers through the speaker, he has a speaking system out at the head of the town, and tells the mate, catch a line, check your head

[4849] in, so the mate tells the deckhand, put it in there and check the head of the barge in. And when he has it checked enough he will tell the mate, stop it, that's enough, don't check it any more, you will pull me in too hard, you will break the coupling. O. K. Then he hollers out there and asks the mate to ask the other deckhand how are we passed the bullnose, well yah, we are passed the bullnose. O. K. He hollers and tells the deckhand, you come back to the coupling and help the deckhand in the coupling. Well, then, the pilot again might tell the mate to get a bumper in-between the walls or the deckhand to get a bumper between the wall and the lock. Well, they get on down into the lock a little ways, he clears the gates, he will holler out because the mate and the deckhand are out on the head of the tow, then he will holler at the deckhand at the coupling to knock off your inside rigging in order to expedite the operation. You have quite a bit of rigging in these couplings, so you knock off the extra rigging in preparation to breaking your tow and either getting in the lock or backing out and with the second half. So he directs

those deckhands to knock off their inside rigging and when he gets his locking, the first locking in the lock, why —

Q (Interrupting) Excuse me, do they let him know that they have accomplished that or can he see it or what? A He can see them, he is looking at them.

Q All right, just continue.

[4850] A If he can't see them, there are cases when he can't see them. When he hears the rigging rattle he takes it for granted that they have did that. He can hear them if he can't see them. And so then he backs on out. First he gets in the lock. Then at this time a deck hand takes charge of a line on each end of the lock edge in the event that he has a second lockage and the mate comes back and they back out of the lock.

Q The mate is with the deck hand at that time? A The mate is with the deck hand as he backs out of the lock and ties it up to the wall. Then the mate goes back up on the lock wall and to pull out the first locking out of the lock with a winch they have in it. At this time there is one deck hand left back on the boat and on the tow with the pilot and lots of times I have been the pilot, and I have did it myself, told the deck hand how about coming up and loading a light if it is nighttime or doing something for me while we are laying that at the lock. And that's just about the size of it, I guess.

Q Now, while — you are now in the lock, are you? A No, I haven't got the second part in yet. We pull the first lockage out and they fill the chamber, open the upper gates and they, the mate then and one of the deck hands has returned to the boat. They have tied the other lockage up below the lock and one deck hand has stayed on the

lockage to watch the lines when they dump the chamber.

tionary? A He is trying to handle them lines when that water comes out there and gives a surge that they don't go on down the river, try to keep from breaking it loose, and lots of times you can slack the line a little bit to help kill the initial surge and it will stay there where otherwise it would break and go on. So the mate and one deck hand comes back to the second part of the locking, the boat and the second part and when the chamber is ready, why, they open the gates and they go in. They close the gates, lower the chamber, open the lower gates and then they shove out and put the two ends together and then they place the rigging on the tow and during this time, why, there is, oh, very, very little out of the ordinary happens once that you get inside those two concrete walls.

Q At that point the pilot is not doing much talking to the deck crew? A Well, what he might do while he is tied up to the upper wall, he might ask one of the deck hands to come up and load the light. Well, lots of times, you know, I have had it to happen to me when I was a pilot. About ten minutes later here comes a deck hand up and I have to say, look, Jack, just because the mate's out there don't think you can get by with this stumbling around. Either get up here and load the lights or you are going to have to go. So that's a very usual occurrence, when the cat's away the mice will play, so the pilot's got to look

[4852] after things little bit for the mate while the mate is out ahead.

[4858] Q (By Mr. Carter) And as a matter of fact, in your experience and observation in present day times these small boats operating on the river, oh, let's say a thousand to two thousand tons carry deck crews on watch that would be made up something like one mate and one deck hand or one mate and two deck hands, would they not? A In the smaller crews, Mr. Carter, I run into such a position called head deck hand instead of mate. You get down to

[4859] a head deck hand category, where I don't — his duties, the head deck hand, of course, is all the duties of a deck hand plus a few other duties tied in with it.

[4870] REDIRECT EXAMINATION

Q (By Mr. Gore) . . .

[4873] Q Now, you described a situation of when you come into a lock. Are there situations of docking that are somewhat different? A The situations of docking, one of the differences you would run in to there, of course, being close to shore, you would sometimes run into the currents that tend to carry you in different directions and cause you to have to issue numerous orders or catch a line here and throw that one off there and turn everything loose, we are going to have to back out and leave it. We have had, I have had that happen, where we have went to back into a fleet and then the eddy would

catch the boat and we couldn't get the stern in and the current finally got down in between us and we had to turn the whole thing loose. Of course, that results in issuing a lot more orders and screaming and hollering some in order to get the tow turned loose in order to keep from tearing the whole fleet loose.

Q When you are coming alongside do you issue a lot of orders?

[4874] A Many.

Q And to whom do you issue them? A The mate and the deck crew.

Q Really to everybody around, is that correct? A

Everybody I can holler at, yes.

Q And are you the only one who does that? A No, the pilot does it, too, and the mate screams, too. They scream at the deck hands, the pilot screams at the mate and everybody is hollering something.

Q Does the pilot ever scream at the deck hands? A

Yes, the pilot screams at them, too.

Q In other words, the coming alongside is not just a quiet little operation, is it? A That is correct. As I described, the element, you can't judge them that completely and you have sometimes as high as 30,000 tons of cargo without the weight of the barges even counted in and this results in a sort of a ticklish situation where your miscal-culations can't be immediately corrected by your boat sometimes, you have to be assisted by lines and everything else available and everybody available in order to come to the sweet conclusion of finally getting where you want to get.

Q Now, in coming to that sweet conclusion, whose judgment is it that brings you to that sweet conclusion? A

The top man, the pilot or the master, whoever is on watch.

[4875] Q And is that judgment exercised the same way each time? I mean, in other words, is it the same decision each time or is that a separate independent exercise of judgment? A Every landing is an operation of its own.

Q Requiring separate judgment, is that what you are

suggesting? A That's right.

Q Now, with respect to the so-called instructions that the master leaves for the pilot, are these instructions things that suggest the way in which the pilot should carry out his duties? A They are general instructions. You have so many barges to add, you have figured out where you want to put them and so when the pilot comes up you tell him place the different number barges in different positions and shift these, but you don't tell him how to come about it. You just tell him that's where you want them finally to end up. That's all there is to it.

Q And who issues the orders to see that they come out as you finally have suggested? A The pilot.

[5175] MACK BREWER

a witness called by and on behalf of the General Counsel, first being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Nachman) . . .

A Mack Brewer.

Q Where do you live, Mr. Brewer? A Paducah, Ken-

tucky.

Q Were you at any time — let me ask you this question, were you during the years 1956, 1957 and 1958, at anytime employed by Ingram Barge Company?

[5176] A Yes, sir, I was.

Q Was it during that entire time or part of

the time? A All of the time.

Q Up to July 5, 1958. In what capacity were you employed by Ingram Barge? A Second mate.

Q Licensed or unlicensed? A Unlicensed.

[5181] Q (By Mr. Nachman) The question that was asked you, Mr. Brewer, was were you at any time a member of any labor organization, any union? A Yes, sir. First I was with No. 3, a deckhand. Then, they put me up as second mate to 28.

Q All right. Now, what period of time were you a member of Local 3? A Well, sir, I can't tell you and be honest about that. I'd say about 18 to two years, eighteen months

to two years. Now, I ain't saying that's true.

MR. GORE:

I move to strike the answer because the witness is now testifying to matters that he considers untrue.

TRIAL EXAMINER:

It is obvious to me that this is merely a manner of expression on the part of the witness in which he is not saying that he isn't telling the truth. He is merely saying that he can't state exactly that it was eighteen months to two years. Your objection is overruled. Your motion to strike is denied.

Q (By Mr. Nachman) Now, you told us you at one time became a member of Local 28, can you tell us about when you became a member of Local 28. A About the same time, either eighteen months or two years.

[5183] Q Let me ask you this; what vessel were you working aboard

[5184] during the first seven months of 1958? A I was working six months on the ALICE IN-GRAM. I got off the 13th of June. I remember that well.

Q All right. And, where did you go on the 13th day of June? A I went home to Paducah.

Q Was that on leave? A Yes, sir.

[5194] Q Now, you have told us that during the first six or seven months of 1958 you worked aboard the ALICE INGRAM? A Yes, sir.

Q How about the year, 1957, where did you work, on what vessel did you work? A Part of the time I was on the ARTHUR J. DYER, the rest of the time on the ALICE INGRAM.

Q What portion of the year did you work on the ALICE INGRAM? A I think I worked either three or four months on the ARTHUR J. DYER and then went over to the ALICE INGRAM.

Q Well, what part of the year were you on the DYER? Was it the first four months or the last four months or what? A First four months.

Q First four months you were on the DYER? A (Nodded affirmatively).

Q The remainder of the year you were on the ALICE INGRAM? A Yes, sir.

Q In what capacity did you work aboard the ALICE INGRAM? A Second mate.

Q Licensed or unlicensed? A Unlicensed.

[5195] Q During the time that you were on the ALICE INGRAM —

MR. GORE:

I object to all this testimony and move that it be stricken. This witness was available and could have been called and should have been called earlier.

TRIAL EXAMINER:

Motion to strike is denied.

MR. GORE:

There is no rebuttal testimony with respect to any matters regarding the ALICE INGRAM.

Q (By Mr. Nachman) During the time that you were on the ALICE INGRAM what classification; what people constituted the deck crew? A Well, sir, one deckhand and two mates.

Q You were the second mate? A I was the second mate.

Q And you had one other mate on board? A Well, part of the time it would be the first mate, part of the time it was a relief mate.

Q Do you know what watch the deckhand stood? A He stood the forward watch.

Q What watch did you work? A I stood the after watch.

Q During the time that you were on watch what other person in the deck crew was on, was there on watch? A The mate in the daytime.

Q First mate? A If he was on, he was on. If he wasn't on the boat the

[5196] relief mate.

Q During the time that you were on watch, was the deckhand on watch? A No, sir.

MR. NACHMAN:

That's all — just one further question.

Q (By Mr. Nachman) Was that the condition during the entire time that you worked aboard the ALICE IN-GRAM during 1957? A Yes, sir.

Q Was that also the condition on the ALICE INGRAM during the time you were aboard during 1958? A Yes, sir.

CROSS EXAMINATION

Q (By Mr. Gore) ...

[5199] Q And then you say after the middle of 57 or when it was that you changed your member-

ship, you changed it to another union. A They changed it.

Q Who is they? A I don't know. I got a slip of paper in an envelope said I owed them, had to go in as second mate.

Q Were you a second mate at the time? A Yes, sir.

Q Were you working as a second mate at the time? A Yes, sir.

Q What boat were you working on at the time? A ARTHUR J. DYER.

Q And as a second mate? A Second mate.

Q Were you directing any personnel at the time, any deckhands? A At times, yes, sir.

Q Telling them what to do? A Yes, sir.

Q And so when you were directing deckhands you became a member of Local 28, you say, is that right? A Yes, sir.

[5222] Q What about Beard, you worked with Beard, didn't you? A Yes, sir.

Q He was a mate? A Yes, sir.

Q And he got off enroute? A I have seen him get off on the other end.

Q All right. And, when he got off enroute who was acting first mate? A We just went on like we always did with no mate on.

Q You weren't first mate then? A I was second mate.

Q You were the guy giving the orders to the tankermen? A Yes, sir. If there were any orders to give I would give them.

Q This is aboard the ALICE we are talking about? A Yes, sir.

Q Now, do you remember that in November of 1957 you were aboard with Sykes and Blocker as tankermen? A I could have been.

Q They were both tankermen aboard and you were the second mate? A (Nodded affirmatively).

Q Who worked with you on your watch? A **[5223]** No one.

Q You mean to say that three men then worked on the other watch? A None but two.

Q Who? A They don't carry but three on the ALICE.

Q Well, don't you remember that you had four on the ALICE at times? A We had once and a while, but not long at a time.

Q That's right, you had four. You would even rotate in your beds, wouldn't you in order to make a place for the

other guy to sleep? A No, sir.

Q That's not what happened? A We made that so that the fellow on spare watch kept one bed and the other one take the other bed.

Q That's just what I meant. One guy got up and the

other guy got into his bed? A Yes, sir.

Q And those were the times when you either had two tankermen aboard or a deckhand and a tankerman aboard? A Yes, sir.

Q And when that was the situation you did work with, didn't you, with a deck hand or a tankerman on your watch?

A (Nodded affirmatively). Sure, no, sir. [5224]

Q You worked alone all the time? A Way it worked on that boat, you stand six hours and the other fellow six hours.

Q All right. That's all right, but you had one tankerman taking six hours and the other standing six hours? A No. sir.

Q He wouldn't? A While I was on there I stood the after watch all the time, and by myself.

Q I understand that, I understand. Let's make sure you understand what I am saying.

I thought you just testified that when you took the fourth man aboard he would be on the opposite watch so that he would get into the bed when another man got up, so that you would have four men on square watches, wouldn't you? A No, sir.

Q You wouldn't? A No, sir.

Q Who would have the daylight watch? A Mate and extra man.

Q They would have daylight watches. All right, then. Then at least in the six hours that you were on the daylight watch you would have two men on your watch wouldn't you? A The mate and the other one would be three. If there is

[5225] four on there the mate and the extra man stood daylight unless we were loading and unloading.

Q And the other guy would stand what? A square watch? A Yes, sir, a square watch.

Q And that square watch would be opposite you? A Yes, sir.

Q All the time? A Yes, sir.

Q I see. Then when you got out of bed this other guy got into your bed is that right? A Yes, sir.

Q It was your bed that was being exchanged? A Yes, sir.

Q I see. Now, do you remember working with Sykes and Blocker aboard at the same time? A Well, not to

be honest about it, but I worked with them, I don't know whether at the same time. I could have.

Q You could have. All right. Do you remember working with them when Beard got off the boat enroute? A No, sir, I just don't know whether they was on there or not.

Q It's possible? A It's possible.

Q And at that time you would be acting second mate? A That's right.

[5226] TRIAL EXAMINER:

Is there going to be any redirect on this witness?

MR. NACHMAN:

Very little.

Q (By Mr. Gore) Did you work on the ALICE when Taylor was a tankerman? A Yes, sir.

Q And when Taylor was a tankerman, you always worked, didn't you, with two tankermen aboard? A When he was tankerman on there we was all tankermen. All loaded or unloaded.

Q I see. And then how many tankermen would you carry when he was aboard? A It would be two.

Q I see. A Myself and Taylor.

Q I see. Don't you remember being aboard of September of 1957 when Sykes and Taylor were both aboard as tankermen, at the same time that you were aboard? A What time?

Q September of 1957? A No, sir, I don't remember, it could have been.

Q It could have been. I take it that is another situation where Beard might have gotten off enroute? A It could have been.

Q And when they were both aboard as tankermen and Beard got

[5227] enroute who would act as mate? A I would.

Q Was there any doubt about that? A No, sir.

Q And when you acted mate who issued orders to the deck crew? A I did.

Q Did they ever obey them? A They obeyed me.

BY-LAWS

of

International Organization of Masters, Mates & Pilots Local No. 28 721 Cotton Belt Building Saint Louis 2, Missouri

ARTICLE I.

This body shall be known as International Organization of Masters, Mates & Pilots, Local No. 28.

ARTICLE II.

- Section 1. This Organization shall be composed of personnel acting in an officer capacity aboard sail or power-propelled vessels on ocean, coastwise, Great Lakes and Inland waters, who have been regularly admitted to membership and are in good standing.
- Sec. 2. Any unlicensed person shall be placed in a probationary status for one year or until he obtains an original deck license as Pilot or Mate. After receiving his license he shall have privilege of a full member.

ARTICLE VIII

OPERATING SHORTHANDED:

- (a) It is understood and agreed that when the Deck Crew, Engine Room Crew, or Steward's Department are short of full crew, the men that remain in any of these departments and actually do the work shall receive the pay of the number of men short, divided equally among them. This provision shall not apply except where the shortage has continued for twelve (12) hours or more.
- (b) On boats operated on the Cumberland River, an extra deckhand will be furnished when more than 3 lockings are required.
- (c) On vessels operating from St. Louis to St. Paul, Chicago to St. Paul or Louisville to Pittsburgh area, an additional deckhand will be carried except when a Steersman is aboard. The Steersman will assist at the locks.
- (d) There shall be no unnecessary work required Saturday afternoons, Sundays or legal holidays, or between the hours of 5:00 P. M. and 7:00 A. M., except as provided in the paragraph immediately following. Unnecessary work shall be defined as cleaning paint, painting, and/or chipping and polishing brass. Sanitary work such as cleaning quarters, toilet rooms and pilot house excepted.

Safety of personnel, normal procedures carried on in the process of loading or unloading the vessels in their respective ports or taking stores.

ARTICLE VIII

WAGE RATES:

Section 1. Effective March 16, 1956, wage rates for employees subject to this agreement shall be as follows:

Master-Pilot Pilot Mate (licensed) Relief Mate (licensed)	\$820.00 per month 710.00 per month 465.00 per month 440.00 per month
Relief Mate (licensed) Second Mate (licensed) Second Mate (unlicensed)	410.00 per month 375.00 per month

The above wages will apply when the Tug J. A. O'NEILL is operating on the Mississippi River and its tributaries. When the vessel is shifted to other waters for regular operation, the wages will be subject to re-negotiations.

INGRAM BARGE CO. SENIORITY LIST

APRIL 15, 1958

MASTERS, MATES & PILOTS

	Present
Masters & Pilots	Assignment
Hutchinson, Charles R.	5-19-47
Crist, Harry H.	7- 1-47
Hass, Walter I.	12-25-48
Zimmer, Arthur H.	4-16-50
Coats, James W.	2-25-52
McCandless, Carl G.	3-28-52
Lucas, Mark E.	2-15-54
Steinmetz, Oliver O.	5- 4-54
Schickling, Gilbert R.	5-27-54
Underwood, Harry V.	5-30-54
Johnston, James B.	7- 7-55
Schickling, R. S.	8-16-55
Barber, Harry J.	10-30-55
Dunn, Thomas S.	4- 5-56
Nice, David L.	4-24-56
DuClos, Albert L.	5-23-56
Carney, Woodrow	6- 7-56
Huele, Harold E.	8- 5-56
McGee, James E.	8-11-56
Hansen, Herman J., Jr.	1-21-57

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Seniority List — April 15, 1958

First Mates	Date Employed	Present Assignment
Johnson, Wayne L.	5-24-51	8- 1-54
Reaves, John W., Jr.	10-23-50	9- 1-55
Hunt, Charles R.	6-19-53	9-15-55
Coyle, Mallory J.	12-31-54	12-29-56
Beard, James C.	2- 7-55	1- 5-57
Shaw, James C.	12- 4-52	9-16-57
McReynolds, Geo. E.	6-19-53	9-16-57
Honeycutt, Robert	3-23-54	9-16-57
Howell, Dexter	4-18-56	9-16-57
Goodson, Vernon	3-24-56	9-16-57
Second Mates — Licensed	1-12-54	9-19-56
Mummell, Alex	9-12-55	11-21-56
Prewett, William	10-25-54	9-16-57
Waye, Albert Gipson, Raymond	2-18-56	11-13-57
Second Mates — Unlicensed	2 20 51	5- 1-53
Brewer, Mack	2-23-51	7- 1-53
Doom, Geo. P.	3-11-52	1- 1-54
Joyce, Robert B.	12-20-52	
Riggins, Norman	12- 5-50	2-16-54
Borden, Gene C.	6-17-56	10-15-56*
Dinapoli, Calogero	12-13-57	12-13-57*
Taylor, Irvin	5-10-53	9-16-57
Miller, Thomas	1- 3-55	9-16-57

^{*}Tug J. A. O'NEILL only

RESPONDENTS EXHIBIT No. 26

INGRAM BARGE COMPANY SENIORITY LIST MARCH 1, 1957

MASTERS, MATES & PILOTS

2.0	Date	Present
Masters	Employed	Assignment
Hutchinson, Charles R.	5-19-47	10-15-47
Crist, Harry H.	7- 1-47	12-15-47
Hass, Walter I.	12-25-48	8- 8-49
Zimmer, Arthur H.	4-16-50	12-16-50
Coats, James W.	2-25-52	8-15-52
Pilots		
McCandless, Carl G.	3-28-52	3-28-52
Ford, George R.	5-14-52	5-14-52
Lucas, Mark E.	2-15-54	2-15-54
Steinmetz, Oliver O.	6- 2-50	5- 4-54
Schickling, Gilbert R.	5-27-54	5-27-54
Underwood, Harry V.	6-19-52	5-30-54
Johnston, James B.	7- 7-55	7- 7-55
Schickling, R. S.	9-11-55	9-11-55
Barber, Harry J.	10-30-55	10-30-55
Dunn, Thomas S.	4- 5-56	4- 4-56
Nice, David L.	4-24-56	4-24-56
DuClos, Albert L.	5-23-56	5-23-56
Carney, Woodrow	5-16-53	6- 7-56
Holland, Fred	7- 2-56	7- 2-56
Huele, Harold E.	8- 5-56	8- 5-56
McGee, James E.	8-12-52	8-11-56
Hansen, Herman J., Jr.	1-21-57	1-21-57

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	Date	Present
T I isomsed	Employed	Assignment
Engineers, Licensed	1-22-48	4-22-48
Young, H. C.	2-19-48	10- 1-51
Collins, Chas. H.	5-13-49	8- 1-52
Porter, Chas. E.	9-18-52	9-18-52
Hamby, Kenneth H.	10- 9-52	3-15-53*
Moore, James R.	9-10-53	9-10-53
Loos, Lloyd, L.	8-22-53	10-14-53
Adams, Carl J. Moore, Norris B.	8- 9-54	8- 9-54
Chalk, Charles M.	12-29-50	2- 1-55
Flood, Philip G.	7-25-50	4-16-55
	6-16-55	6-16-55
Pence, Robert McQuigg, James B.	6-23-55	6-23-55
McGuigg, James D.	7-25-55	9-21-55
Wakeman, Otis	5-21-56	5-21-56
Theissen, Otto	5-21-56	7-19-56
Loftin, Lloyd	9-21-56	9-21-56
Carr, Lacey Hodge, Howard	10- 8-56	10- 8-56
Allison, Noah B.	5-22-51	10-11-56
Daniels, L. L.	11-18-56	11-18-56
Asst. Engineers — Unlicensed		F 1 50
Strop, Oscar	12-15-51	7- 1-52
Morris, George	2-28-52	2-15-54

^{*}Refused Chief Engineer on E. B. INGRAM

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	Date	Present	
First Mates	Employed	Assignment	
Johnson, Wayne L.	5-24-51	8- 1-54	
Reaves, John W., Jr.	10-23-50	9- 1-55	
Hunt, Charles R.	6-19-53	9-15-55	
Jones, Elton G.	4-29-54	2-16-56	
Fuqua, Lester C.	5- 7-55	7-16-56	
Beard, James C.	2- 7-55	1- 5-57	
Relief Mates			
Shaw, James C.	12- 4-52	10- 1-55*	
Coyle, Mallory J.	12-31-54	9-23-45	
McReynolds, Geo. F.	6-19-53	3- 1-56	
Keese, Vester	3-17-56	4-25-56	
Honeycutt, Robert	3-23-54	7-22-56	
Howell, Dexter	4-18-56	8- 2-56	
Second Mates — Licensed			
Goodson, Vernon	3-24-56	8-30-56	
Mummel, Alex	1-12-54	9-19-56	
Prewett, William	9-12-55	11-21-56	
Second Mates — Unlicensed			
Brewer, Mack	2-23-51	5- 1-53	
Doom, George P.	3-12-52	7- 1-53	
Joyce, Robert B.	12-20-52	1- 1-54	
Riggins, Norman	12- 5-50	2-16-54	
Borden, Gene C.	6-17-56	10-15-56**	

^{*}Refused First Mate's job.

^{**}Tug J. A. O'NEILL only.

	Date	Present
Oilers	Employed	l Assignment
Sattler, Louis W.	9-23-53	9-23-53
Brindley, Mason	12- 4-53	12- 4-53
Hildreth, Harvey F.	10-20-53	12- 7-53
Holland, Robert B.	10-27-54	10-27-54
	11-29-54	11-29-54
Bullard, Arthur R.	10-21-54	8- 1-55
Mash, Johnnie	2-21-56	7-30-56
Palmer, Junior	10-15-56	10-15-56
Wiggington, Gerald	12-18-55	11-28-56
Buchannan, Billy C.	12-18-56	12-18-56
Farmer, Jerry	12-10-00	12-10-00

	Date	Present
Tankermen	Employed	Assignment
Taylor, Irwin A.	5-10-53	2- 1-55
Waye, Albert, Jr.	10-25-54	10-12-55
Keeling, Huie P.	6-29-55	2-27-56
Wilkey, Ernest	9- 2-55	3- 1-56
Koen, James R.	4- 8-56	4- 8-56
Gipson, Raymond	2-18-56	5- 1-56
Reeder, Marvin B.	9-26-56	9-26-56
	1- 3-55	10-16-56
Miller, Thomas E.	11- 8-56	11- 8-56
Cook, Norman	11-23-56	11-23-56
Human, Carl L., Jr.	12-20-56	12-20-56
Owen, J.T. Wall, Robert	7-29-56	2- 1-57

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	Date	Present
Deckhands	Employed	Assignment
Murray, Selby A.	12- 2-54	12- 2-54
Oliver, Willie L.	11-13-55	12-30-55
Lowry, James	2-28-56	2-28-56
Sewell, Claude G.	4-15-56	4-15-56
Blocker, Tillman	5-25-56	5-25-56
Emerton, Emil T.	7- 1-56	7- 1-56
Bond, Charles R.	7- 1-56	7- 1-56
Livingston, Charles M.	7-23-56	7-23-56
Lacy, Francis	8- 2-56	8- 2-56
Smith, Harold W.	9-21-56	9-21-56
Richardson, Bobby J.	9-25-56	9-25-56
Lewis, Andrew G.	10- 2-56	10- 2-56
Williams, Robert C.	10-23-56-	10-23-56
Reeves, Thomas C.	10-23-56	10-23-56
Arnold, Ray S.	12- 5-56	12- 5-56
Alford, Johnny E.	12-12-56	12-12-56
Morris, Ben F.	12-21-56	12-21-56
Wilburn, Jimmy L.	1- 3-57	1- 3-57

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	Date	Present.
Cheks:	Employed	Assignment
Vaughn, Lillian H.	3- 2-49	3- 2-49
Riemann, Lora A.	4-26-52	4-26-52
Lee, Otho J.	7- 4-52	7- 4-52
Sudworth, Frank	12- 4-52	12- 4-52
Anderson, Elaine K.	5-16-54	5-16-54
Sanderson, Thelma J.	12-16-54	12-16-54
Wood, Ben E.	12- 5-55	12- 5-55
Roberts, Mrs. Clyde	12- 6-55	12- 6-55
McMillan, Clytee H.	4-26-56	4-26-56
Spees, Nellie Mae	5-25-56	5-25-56
Moretti, Joseph	11-14-56	11-14-56
Wilson, Luke B.	1- 1-57	1- 1-57
Choks' Helpers		~ ~
Vaughn, Christopher C.	3- 2-49	3- 2-49
Riemann, Charles E.	4-26-52	4-26-52
Anderson, Harry L.	5-16-54	5-16-54
Sanderson, Curtis L.	12-16-54	12-16-54
Roberts, Clyde	12- 6-55	12- 6-55
McMillan, E. P.	4-26-56	4-26-56
Spees, Horace A.	5-25-56	5-25-56



NAME OF VESSEL MIN HORTENSE B. INCRAM

INGRAM BARGE COMPANY

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